

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1907

No. 105 3d 9.

THE UNITED STATES, APPELLANT,

vs.

THE OREGON AND CALIFORNIA RAILROAD COMPANY,
JOHN A. MURDOCK, AND THOMAS E. EVANS.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT.

PRINTED AT WASHINGTON

(1907)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 295.

THE UNITED STATES, APPELLANT,

VS.

THE OREGON AND CALIFORNIA RAILROAD COMPANY,
JOHN A. HURLBURT, AND THOMAS L. EVANS.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE NINTH CIRCUIT.

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Citation.

UNITED STATES OF AMERICA,
District of Oregon, ss:

To the United States, greeting:

Whereas The Oregon & California Railroad Company, John A. Hurlburt, and Thomas L. Evans have lately appealed to the United States circuit court of appeals for the ninth circuit from a decree rendered in the circuit court of the United States for the district of Oregon in your favor, of date September 9th, 1895, and have given the security required by law, you are therefore hereby cited and admonished to be and appear before said circuit court of appeals at San Francisco, California, within thirty days from date hereof, to show cause, if any there be, why the said decree should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand at Portland, in said district, this Dec. 30th, 1895.

GILBERT, *Circuit Judge.*

(Endorsed:) United States, district of Oregon, county of Multnomah, ss. Due and legal service of the within citation is hereby admitted to have been made upon the United States and upon me, within said county and district, this 30th day of December, 1895. Daniel R. Murphy,

United States district attorney and solicitor for complainant.
 2 U. S. circuit court, district of Oregon. The United States, complainant, vs. The Oregon & California Railroad Company, John A. Hurlburt, and Thomas L. Evans, defendants. Citation on appeal. Filed Dec. 30, 1895. J. A. Slader, clerk.

In the circuit court of the United States for the district of Oregon.
 October term, 1892.

Be it remembered that on the 3d day of February, 1893, there was duly filed in the circuit court of the United States for the district of Oregon a bill of complaint in words and figures as follows, to wit:

In the circuit court of the United States for the district of Oregon.

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

THE OREGON AND CALIFORNIA RAILROAD COMPANY, JOHN A. HURLBURT, and THOMAS L. EVANS,
 defendants.

In equity.

Bill of complaint.

To the Honorable Judges of the Circuit Court for the District of Oregon,
 Sitting in Equity:

3 The United States of America, by W. H. H. Miller, its Attorney-General, brings this its bill of complaint against The Oregon and California Railroad Company, a corporation organized under

and by virtue of the laws of the State of Oregon and a citizen of said State and district, John A. Hurlburt, and Thomas L. Evans, citizens of the United States and of the State of Oregon, and residents of the State of Oregon, and complaining, says:

Par. 1. That the Congress of the United States, by an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget's Sound, on the Pacific Coast, by the northern route," approved July 2, 1864, created the corporation of The Northern Pacific Railroad Company and authorized it to build a railroad from a point on Lake Superior in Wisconsin or Minnesota westerly by the most eligible route north of the forty-fifth degree of latitude to some point on Puget's Sound, with a branch via the Columbia River, to a point at or near Portland, in the State of Oregon, and granted to said company every alternate section of public land not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said company might adopt, through the Territories of the United States, and ten alternate sections per mile on each side of said railroad whenever it passed through any State, and whenever on the line thereof the United States had full title, not reserved, sold, or granted, or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road should be definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office; and whenever prior to said

4 time any of said sections or parts of sections should have been granted, sold, reserved, occupied by homestead settlers, or pre-empted or otherwise disposed of, other lands should be selected by said company in lieu thereof under the direction of the Secretary of the Interior, in alternate sections and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections.

2nd par. And your orator further shows that by a joint resolution entitled "A resolution authorizing the Northern Pacific Railroad Company to issue its bonds for the construction of its road, and to secure the same by mortgage and for other purposes," approved May 31, 1870, the Congress of the United States authorized the said Northern Pacific Railroad Company to locate and construct, under the provisions and with the privileges, grants, and duties provided for in its act of incorporation, its main road to some point on Puget Sound via the valley of the Columbia River, with the right to locate and construct its branch from some convenient point on its main trunk line across the Cascade Mountains to Puget Sound; and your orator avers that said general direction and locality designated in the said resolution as the main line between the junction point and Portland is the same general direction and locality designated as the branch in said act of incorporation.

3rd par. Your orator would further show that on March 6, 1865, the then Secretary of the Interior received from Josiah Perham, the then president of the said Northern Pacific Railroad, a certain letter of that date, a copy of which letter is filed herewith and made a part hereof, marked "Exhibit B."

5 That accompanying said letter was the map referred to therein, a copy of which is herewith filed and made part hereof, marked "Exhibit C."

That on March 9, 1865, the then Secretary of the Interior transmitted said map to the then Commissioner of the General Land Office, with letter, a copy of which is filed herewith and made part hereof, marked "Exhibit D."

That on June 22, 1865, the then Commissioner of the General Land Office returned said map to said Secretary of the Interior, with a letter, a copy of which, with its endorsements, is filed herewith and made part hereof, marked "Exhibit E."

That on April 27, 1867, Mr. E. F. Johnson, the chief engineer of the said Northern Pacific Railroad Company, addressed a letter to the Commissioner of the General Land Office, accompanied by a certain map therein referred to, which letter was replied to on May 8, 1867, by said Commissioner, a copy of which letter, map, and reply are attached together, and filed herewith and made part hereof, and marked as one "Exhibit F."

That on February 18, 1870, Mr. H. D. Cooke, on behalf of the said Northern Pacific Railroad Company, sent to the Secretary of the Interior a certain letter of J. Gregory Smith, the president of said railroad company, dated February 17, 1870, a copy of which letter is filed herewith and made part hereof, marked "Exhibit G."

That on February 21, 1870, the Secretary of the Interior replied to said letter, a copy of his reply being filed herewith, made part hereof, and marked "Exhibit H."

6 That on August 4, 1870, two maps of general route were presented to the then Secretary of the Interior by said Edwin F. Johnson, chief engineer of said Northern Pacific Railroad Company, a copy of which maps and the letter of the Secretary of the Interior, directing a withdrawal thereunder, attached together, is filed herewith, made part hereof, and marked "Exhibit A." Accompanying said maps were certain certificates of the officers of said railroad company, copies of which are filed herewith and made part hereof, and marked "Exhibit J," and the letter of the Secretary of the Interior, dated August 13, 1870, to J. G. Smith, a copy of which is filed herewith, made part hereof, and marked "Exhibit K." And orator avers that said last-mentioned maps designated, among other things, a route following the Columbia River from Wallula, Washington Territory, to a point on the north side of said river opposite Portland, in the State of Oregon, and the Secretary of the Interior did, on the 13th day of August, 1870, in due form, accept said map and directed the withdrawal of lands opposite the line in question, and the following described lands situate in the State of Oregon were odd numbered sections or parts of odd numbered sections of public lands not mineral within the place limits of said proposed line of railroad as designated by said map and within the limits of the withdrawal ordered: Lot number five (5), section thirty-five (35), township one (1) south, range one (1) east; lot number two (2), section three (3), township two (2) south, range one (1) east; lots number one (1) and eight (8), section nine (9), township two (2) south, range one (1) east; lots number one (1), seven (7), eight (8), and nine (9), section fifteen (15), township three (3) south, range one (1) east; lot number one (1), section twenty-five (25), township three (3) south, range one (1) east; lots one (1), two (2), three (3), and four (4), section thirty-five (35), township three (3) south, range one (1) east; southeast quarter section one (1),

township four (4) south, range one (1) east; northeast quarter southwest quarter section eleven (11), township four south, range one (1) east; west half northeast quarter section thirteen (13), township four (4) south, range one (1) east; north half southeast quarter section twenty-three (23), township four (4) south, range one (1) east; lot number one (1), section twenty-seven (27), township four (4) south, range one (1) east; northwest quarter section one (1), township five (5) south, range one (1) east; west half southeast quarter section nine (9), township five (5) south, range one (1) east; east half northwest quarter and east half southwest quarter section thirteen (13), township five (5) south, range one (1) east; northeast quarter section one (1), township six (6) south, range one (1) east; lots number eight (8) and nine (9), section eleven (11), township six (6) south, range one (1) east; west half section thirteen (13), township six (6) south, range one (1) east; west half northeast quarter and west half southeast quarter section thirteen (13), township six (6) south, range one (1) east; east half northeast quarter and lots one (1) and two (2), section twenty-three (23), township six (6) south, range one (1) east; southeast quarter southeast quarter section nine (9), township one (1) south, range two (2) east; lot number two (2), section eleven (11), township one (1) south, range two (2) east; northeast quarter northeast quarter section fifteen (15), township one (1) south, range two (2) east; south half and lots number one (1), two (2), three (3), and four (4), section twenty-three (23), township one (1) south, range two (2) east; southeast quarter southeast quarter and west half southwest quarter section twenty-seven (27), township one (1) south, range two (2) east; southeast quarter northeast quarter and lots one (1), two (2), and four (4), section twenty-nine (29), township one (1) south, range two (2) east; lots number three (3) and four (4), section thirty-five (35), township one (1) south, range two (2) east; north half of southeast quarter of southwest quarter section one (1), township two (2) south, range two (2) east; southwest quarter northeast quarter and south half northeast quarter section three (3), township two (2) south, range two (2) east; lots four (4) and seven (7), section thirteen (13), township two (2) south, range two (2) east; southwest quarter northwest quarter and southwest quarter section twenty-three (23), township two (2) south, range two (2) east; west half northeast quarter northwest quarter, north half southwest quarter, and northwest quarter southeast quarter section thirty-five (35), township two (2) south, range two (2) east; east half southeast quarter, west half northwest quarter, and west half southwest quarter section (1), township three (3) south, range two (2) east; lots one (1) and two, section three (3), township three (3) south, range two (2) east; southeast quarter northwest quarter, east half southwest quarter, southwest quarter of southwest quarter, east half and lots one (1), two (2), and three (3), section eleven (11), township three (3) south, range two (2) east;

9 east half section thirteen (13), township three (3) south, range two (2) east; northwest quarter section thirteen (13), township three (3) south, range two (2) east; south half southeast quarter and lots one (1), two (2), three (3), four (4), and five (5), section seventeen (17), township three (3) south, range two (2) east; lot five (5), section fifteen (15), township three (3) south, range two (2) east; southeast quarter southeast quarter, and west half southeast quarter section twenty-five (25), township three (3)

south, range two (2) east; north half northeast quarter and northwest quarter section twenty-nine (29), township three (3) south, range two (2) east; north half northeast quarter and north half northwest quarter section thirty-one (31), township three (3) south, range two (2) east; southeast quarter northeast quarter, southwest quarter southeast quarter, west half southwest quarter, southeast quarter southwest quarter, southwest quarter northwest quarter section thirty-one (31), township three (3) south, range two (2) east; northwest quarter and south half section one (1), township four (4) south, range two (2) east; southeast quarter northwest quarter, and east half southwest quarter section three (3), township four (4) south, range two (2) east; west half northwest quarter and west half southwest quarter section five (5), township four (4) south, range two (2) east; northeast quarter section seven (7), township four (4) south, range two (2) east; all section eleven (11), township four (4) south, range two (2) east; north half southeast quarter, west half northeast quarter, and northwest quarter section thirteen (13), township four (4) south, range two (2) east; east half northwest quarter, southwest quarter, and east half section fifteen (15), township four (4) south, range two (2) east; lot two (2), section nineteen (19), township four (4) south, range two (2) east; lot four (4), section nineteen (19), township four (4) south, range two (2) east; south half northeast quarter and northeast quarter southeast quarter section twenty-one (21), township four (4) south, range two (2) east; north half northeast quarter and east half northwest quarter section twenty-one (21), township four (4) south, range two (2) east; north half southwest quarter, northwest quarter, and east half section twenty-three (23), township four (4) south, range two (2) east; east half northeast quarter and south half section twenty-five (25), township four (4) south, range two (2) east; lots one (1) and two (2), section thirty-five (35), township four (4) south, range two (2) east; lots three (3), four (4), and five (5), section one (1), township five (5) south, range two (2) east; lots one (1), two (2), three (3), and four (4), section three (3), township five (5) south, range two (2) east; lots two (2) and three (3), section five (5), township five (5) south, range two (2) east; lots one (1), two (2), and three (3), section seven (7), township five (5) south, range two (2) east; east half northeast quarter and lots two (2) and three (3), section eleven (11), township five (5) south, range two (2) east; south half northeast quarter, southeast quarter, and lots two (2), three (3), and four (4), section thirteen (13), township five (5) south, range two (2) east; south half southwest quarter, section nineteen (19), township five (5) south, range two (2) east; east half northeast quarter, northeast quarter southeast quarter, and lots one (1) and two (2), section twenty-five (25), township five (5) south, range two (2) east; south half northeast quarter, northwest quarter, and south half section thirty-five (35), township five (5) south, range two (2) east; southeast quarter, east half southwest quarter, and north half section one (1), township six (6) south, range two (2) east; northwest quarter, southeast quarter, north half southwest quarter, and north half section three (3), township six (6) south, range two (2) east; all section five (5), township six (6) south, range two (2) east; all section seven (7), township six (6) south, range two (2) east; southwest quarter northeast quarter, northwest quarter northwest quarter, southeast quarter, north half southwest quarter, and southwest

quarter southwest quarter, section nine (9), township six (6) south, range two (2) east; northeast quarter northeast quarter, southwest quarter northeast quarter, southeast quarter northwest quarter, west half northwest quarter, and west half southwest quarter, section eleven (11), township six (6) south, range two (2) east; all section thirteen (13), township six (6) south, range two (2) east; southeast quarter and north half section fifteen (15), township six (6) south, range two (2) east; southeast quarter and north half section seventeen (17), township six (6) south, range two (2) east; all section nineteen (19), township six (6) south, range two (2) east; all section twenty-one (21), township six (6) south, range two (2) east; all section twenty-three, township six (6) south, range two (2) east; southwest quarter and north half section twenty-five (25), township six (6) south, range two (2) east; all section twenty-seven (27), township six (6) south, range two (2) east; northwest quarter northeast quarter, and lot one (1), section five (5), township one (1) south, range three (3) east; southwest quarter northeast quarter, northwest quarter, and lot two (2), section five (5), township one (1) south, range three (3) east; north half northeast quarter section seven (7), township one (1) south, range three (3) east; northwest quarter southwest quarter section thirteen (13), township one (1) south, range three (3) east; west half northwest quarter section fifteen (15), township one (1) south, range three (3) east; lots three (3), four (4), and five (5), section seventeen (17), township one (1) south, range three (3) east; lots one (1) and two (2), section seventeen (17), township one (1) south, range three (3) east; lots seven (7) and eight (8), section nineteen (19), township one (1) south, range three (3) east; east half northeast quarter, east half southeast quarter, southwest quarter southwest quarter, and lot two (2), section twenty-one (21), township one (1) south, range three (3) east; west half southeast quarter and east half southwest quarter, section twenty-one (21), township one (1) south, range three (3) east; south half southwest quarter section twenty-three (23), township one (1) south, range three (3) east; east half northwest quarter, southwest quarter northwest quarter, southwest quarter, east half southeast quarter, and lot one (1), section twenty-five (25), township one (1) south, range three (3) east; northwest quarter section twenty-seven (27), township one (1) south, range three (3) east; southwest quarter section twenty-seven (27), township one (1) south, range three (3) east; south half southeast quarter section twenty-nine (29), township one (1) south, range three (3) east; northeast quarter, north half southeast quarter, and lots one (1), two (2), three (3), and four (4), section twenty-nine (29), township one (1) south, range three (3) east; northwest quarter section thirty-one (31), township one (1) south, range three (3) east; northeast quarter northeast quarter west half northeast quarter, and northwest quarter section thirty-three (33), township one (1) south, range three (3) east; northeast quarter east half northwest quarter, north half southeast quarter, and north half southwest quarter section thirty-five (35), township one (1) south, range three (3) east; northeast quarter and east half southeast quarter section one (1), township two (2) south, range three (3) east; northwest quarter and west half southwest quarter section one (1), township two (2) south, range three (3) east; lot two (2), section nine (9), township two (2) south, range three (3) east; east half northeast quarter, east half southwest quarter, and southeast quarter section eleven

(11), township two (2) south, range three (3) east; north half southeast quarter, and northeast quarter southwest quarter section thirteen (13), township two (2) south, range three (3) east; southeast quarter northeast quarter, and northeast quarter southeast quarter section seventeen (17), township two (2) south, range (3) east; lot two (2), section twenty-one (21), township two (2) south, range three (3) east; lot number five (5), section twenty-one (21), township two (2) south, range three (3) east; lots three (3), four (4), five (5), six (6), and eight (8), section twenty-three (23), township two (2) south, range three (3) east; lot number five (5) section twenty-five (25), township two (2) south, range three (3) east; lots one (1) and six (6), section twenty-five (25), township two (2) south, range three (3) east; lot number four (4), section twenty-nine (29), township two (2) south, range three (3) east; west half northwest quarter and lots three (3), four (4), five (5), six (6), and seven (7), section thirty-one (31), township two (2) south, range three (3) east; south half southeast quarter and lots three (3), four (4), and five (5), section thirty-five (35), township two (2) south, range three (3) east; lots one (1) and two (2), section thirty-five (35), township two (2) south, range three (3) east; lots three (3), four (4), five (5), six (6), seven (7), eight (8), and eleven (11), section one (1), township three (3) south, range three (3) east; lots one (1), two (2), and three (3), section three (3), township three (3) south, range three (3) east; north half northeast quarter, southeast quarter southwest quarter, and lots one (1), two (2), and three (3), section five (5), township three (3) south, range three (3) east; west half northeast quarter, west half southeast quarter southwest quarter, and lots one (1), two (2), three (3), and four (4), section seven (7), township three (3) south, range three (3) east; northwest quarter southwest quarter and lots one (1), two (2), and three (3), section nine (9), township three (3) south, range three (3) east; northwest quarter southeast quarter and lots five (5), six (6), seven (7), and ten (10), section thirteen (13), township three (3) south, range three (3) east; lots one (1), two (2), three (3), six (6), seven (7), and eight (8), section fifteen (15), township three (3) south, range three (3) east; southwest quarter northwest quarter and lot one (1), section seventeen (17), township three (3) south, range three (3) east; north half northwest quarter section nineteen (19), township three (3) south, range three (3) east; northwest quarter northeast quarter section nineteen (19), township three (3) south, range three (3) east; lot one (1), section twenty-three (23), township three (3) south, range three (3) east; lots one (1), two (2), three (3), four (4), five (5), six (6), seven (7), and eight (8), section twenty-five (25), township three (3) south, range three (3) east; southeast quarter northeast quarter, northeast quarter southeast quarter, southwest quarter southeast quarter, and lots one (1), two (2), three (3), four (4), and five (5), section twenty-seven (27), township three (3) south, range three (3) east; southeast quarter south half southwest quarter, northeast quarter northwest quarter, and lots one (1), two (2), three (3), and four (4), section twenty-nine (29), township three (3) south, range three (3) east; northwest quarter northwest quarter section twenty-nine (29), township three (3) south, range three (3) east; northeast quarter southeast quarter, south half southeast quarter, south half southwest

quarter, and northwest quarter southwest quarter section thirty-one (31), township three (3) south, range three (3) east; northwest quarter southwest quarter, and northwest quarter section thirty-three (33), township three (3) south, range three (3) east; north half section thirty-five (35), township three (3) south, range three (3) east; north half north half, southwest quarter southeast quarter, and lots one (1) and (2), section one (1), township four (4) south, range three (3) east; northeast quarter northwest quarter, southwest quarter northwest quarter, northwest quarter southwest quarter, and south half southeast quarter section three (3), township four (4) south, range three (3) east; north half southeast quarter, southwest quarter southeast quarter, and west half section five (5), township four (4) south, range three (3) east; northeast quarter south half northwest quarter, north half southwest quarter, and lot one (1), section seven (7), township four (4) south, range three (3) east; west half northeast quarter, west half southeast quarter, and northeast quarter northwest quarter section nine (9), township four (4) south, range three (3) east; lots one (1), two (2), and three (3), and northwest quarter northeast quarter section eleven (11), township four (4) south, range three (3) east; northeast quarter, west half southeast quarter, and west half section thirteen (13), township four (4) south, range three (3) east; west half northwest quarter section seventeen (17), township four (4) south, range three (3) east; west half southwest quarter section nineteen (19), township four (4) south, range three (3) east; east half northeast quarter, west half northwest quarter, and south half section twenty-one (21), township four (4) south, range three (3) east; all section twenty-three (23), township four (4) south, range three (3) east; northwest quarter northwest quarter southwest quarter and east half section twenty-five (25), township four (4) south, range three (3) east; southwest quarter west half southeast quarter and north half section twenty-seven (27), township four (4) south, range three (3) east; east half northeast quarter, southwest quarter northeast quarter, northwest quarter northwest quarter, east half southwest quarter, and southeast quarter section twenty-nine (29), township four (4) south, range three (3) east; east half northeast quarter, southwest quarter northeast quarter, and southeast quarter

16 section thirty-one (31), township four (4) south, range three (3) east; north half southeast quarter, north half southwest quarter, southwest quarter southwest quarter, and north half section thirty-three (33), township four (4) south, range three (3) east; southwest quarter northeast quarter, south half northwest quarter, southwest quarter, and northwest quarter southeast quarter section thirty-five (35), township four (4) south, range three (3) east; southeast quarter northeast quarter, east half southeast quarter, and southwest quarter southeast quarter section thirty-five (35), township four (4) south, range three (3) east; all section one (1), township five (5) south, range three (3) east; all section three (3), township five (5) south, range three (3) east; south half northeast quarter, south half northwest quarter, southwest quarter, and lots one (1) and two (2), section five (5), township five (5) south, range three (3) east; northeast quarter southeast quarter, northwest quarter northeast quarter, southwest quarter, north half southeast quarter, southeast quarter of southeast quarter, and lot three (3), section seven (7), township

five (5) south, range three (3) east; all section eleven (11), township five (5) south, range three (3) east; all of section thirteen (13), township five (5) south, range three (3) east; all section fifteen (15), township five (5) south, range three (3) east; all section seventeen (17), township five (5) south, range three (3) east; southwest quarter northeast quarter, south half northwest quarter, northwest quarter northwest quarter, and south half section nineteen (19), township five (5) south, range three (3) east; all section twenty-one (21), township five (5) south, range three (3) east; all section twenty-three (23), township five (5) south, range three (3) east; all section twenty-five (25), township five (5) south, range three (3) east; all section twenty-seven, township five (5) south, range three (3) east; east half southeast quarter, west half southwest quarter, and north half section twenty-nine (29), township five (5) south, range three (3) east; northwest quarter northeast quarter, southwest quarter, and lots one (1) and two (2), section thirty-one (31), township five (5) south, range three (3) east; all section thirty-three (33), township five (5) south, range three (3) east; north half section thirty-five (35), township five (5) south, range three (3) east; all section one (1), township one (1) south, range four (4) east; all section three (3), township one (1) south, range four (4) east; all section eleven (11), township one (1) south, range four (4) east; all section thirteen (13), township one (1) south, range four (4) east; northwest quarter and east half section fifteen, township one (1) south, range four (4) east; northeast quarter section seventeen (17), township one (1) south, range four (4) east; southwest quarter section twenty-three (23), township one (1) south, range four (4) east; northwest quarter and east half section twenty-three (23), township one (1) south, range four (4) east; all section twenty-five (25), township one (1) south, range four (4) east; northeast quarter and west half section one (1), township two (2) south, range four (4) east; north half southeast quarter section one (1), township two (2) south, range four (4) east; east half northeast quarter and northeast quarter southeast quarter section three (3), township two (2) south, range four (4) east; east half northeast quarter and southeast quarter section seven (7), township two (2) south, range four (4) east; all section nine (9), township two (2) south, range four (4) east; all section eleven (11), township two (2) south, range four (4) east; north half northeast quarter, north half northwest quarter, southwest quarter northwest quarter, northwest quarter southwest quarter, and southeast quarter section thirteen (13), township two (2) south, range four (4) east; all section fifteen (15), township two (2) south, range four (4) east; north half section seventeen, township two (2) south, range four (4) east; north half northeast quarter, southeast quarter northeast quarter, and lots one (1), two (2), and four (4), section nineteen (19), township two (2) south, range four (4) east; northeast quarter northeast quarter and southwest quarter section twenty-one (21), township two (2) south, range four (4) east; north half northeast quarter, northeast quarter northwest quarter, west half northwest quarter, south half southwest quarter, and south half southeast quarter section twenty-three (23), township two (2) south, range four (4) east; all section twenty-five (25), township two (2) south, range four (4) east; south half northeast quarter, south half northwest quarter, and south

half section twenty-seven (27), township two (2) south, range four (4) east; east half northeast quarter, southwest quarter northeast quarter, and southeast quarter southeast quarter section thirty-three (33), township two (2) south, range four (4) east; all section thirty-five (35), township 2 south, range four (4) east; all section one (1), township three (3)

20 south, range four (4) east; southeast quarter southwest quarter section three (3), township three (3) south, range four (4) east;

south half southeast quarter section three (3), township three (3)

south, range four (4) east; lots two (2) and three (3), section five (5),

township three (3) south, range four (4) east; lots one (1) and two (2),

section nine (9), township three (3) south, range four (4) east; all section

eleven (11), township three (3) south, range four (4) east; all section

thirteen (13), township three (3) south, range four (4) east; southeast

quarter northeast quarter, west half northwest quarter, and lots one (1),

two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9),

and ten (10), section nineteen (19), township three (3) south, range four

(4) east; north half northeast quarter, southwest quarter northeast quarter,

and lots one (1), two (2), three (3), and four (4), section twenty-one

(21), township three (3) south, range four (4) east; lots one (1), two (2),

three (3), five (5), six (6), and seven (7), section twenty-three (23), town-

ship three (3) south, range four (4) east; east half northwest quarter and

east half section twenty-five (25), township three (3) south, range four

(4) east; west half northwest quarter and south half section twenty-

seven (27), township three (3) south, range four (4) east; south half

southeast quarter and lots one (1), two (2), three (3), five (5), seven (7),

and eight (8), section twenty-nine (29), township three (3) south, range

four (4) east; northwest quarter northwest quarter and lots one (1), two

(2), three (3), four (4), five (5), six (6), seven (7), eight (8), and nine (9),

section thirty-one (31), township three (3) south, range four (4) east;

east half and lots one (1), two (2), three (3), four (4), and five (5),

21 section thirty-three (33), township three (3) south, range four (4)

east; south half southwest quarter section thirty-five (35), township

three (3) south, range four (4) east; southwest quarter and east half

section one (1), township four (4) south, range four (4) east; northwest

quarter (east half), southwest quarter (east half), and lots one (1) and two

(2), section three (3), township four (4) south, range four (4) east; northwest

quarter northeast quarter, northwest quarter northwest quarter, southwest

quarter, and lot one (1), section seven (7), township four (4) south, range

four (4) east; southeast quarter southeast quarter and lots one (1), two (2),

three (3), four (4), five (5), six (6), seven (7), eight (8), and nine (9), sec-

tion nine (9), township four (4) south, range four (4) east; northwest

quarter, east half southwest quarter, and east half and lots one (1) and two

(2), section eleven (11), township four (4) south, range four (4) east; all

section thirteen, township four (4) south, range four (4) east; south half

southwest quarter, east half, and lots one (1), two (2), three (3), four (4),

and five (5), section fifteen (15), township four (4) south, range four (4)

east; southwest quarter northwest quarter, southwest quarter, south half

southeast quarter, and lots one (1), four (4), five (5), seven (7), and eight

(8), section seventeen (17), township four (4) south, range four (4) east;

south half northeast quarter and south half northwest quarter and south

half section nineteen (19), township four (4) south, range four (4) east;

all section twenty-one (21), township four (4) south, range four (4) east;
 all section twenty-three (23), township four (4) south, range four (4) east;
 west half section twenty-five (25), township four (4) south, range four (4)
 east; all section twenty-seven (27), township four (4) south, range
 22 four (4) east; all section twenty-nine (29), township four (4) south,
 range four (4) east; all section thirty-one (31), township four (4)
 south, range four (4) east; all section thirty-three (33), township four (4)
 south, range four (4) east; all section thirty-five (35), township four (4)
 south, range four (4) east; west half section three (3), township five (5)
 south, range four (4) east; all section five (5), township five (5) south,
 range four (4) east; all section seven (7), township five (5) south, range
 four (4) east; all section nine (9), township five (5) south, range four (4)
 east; west half section five (5), township one (1) south, range five (5)
 east; all section seven (7), township one (1) south, range five (5) east; all
 section seventeen (17), township one (1) south, range five (5) east; all
 section nineteen (19), township one (1) south, range five (5) east; west
 half section twenty-one (21), township one (1) south, range five (5) east;
 all section twenty-nine (29), township one (1) south, range five (5) east;
 northeast quarter, east half northwest quarter, lot one of northwest quar-
 ter, northeast quarter southwest quarter, and southeast quarter section
 thirty-one (31), township one (1) south, range five (5) east; west half
 northeast quarter, west half southeast quarter, and west half section thirty-
 three, township one (1) south, range five (5) east; all section three (3),
 township two (2) south, range five (5) east; all section five (5), township
 two (2) south, range five (5) east; southwest quarter northeast quarter,
 south half northwest quarter, and lots one (1), two (2), three (3), and five
 (5), section seven (7), township two (2) south, range five (5) east; north
 half section nine (9), township two (2) south, range five (5) east;
 23 west half section eleven (11), township two (2) south, range five
 (5) east; all section fifteen (15), township two (2) south, range
 five (5) east; northeast quarter northwest quarter, northwest quarter, and
 south half southwest quarter section seventeen (17), township two (2)
 south, range five (5) east; west half southeast quarter, northeast quarter,
 and west half section nineteen (19), township two (2) south, range five
 (5) east; southwest quarter northwest quarter and south half section
 twenty-one (21), township two (2) south, range five (5) east; west half
 section twenty-three (23), township two (2) south, range five (5) east;
 all section twenty-seven (27), township two (2) south, range five (5)
 east; east half southwest quarter, southeast quarter, and north half
 section twenty-nine (29), township two (2) south, range five (5) east;
 all section thirty-one (31), township two (2) south, range five (5)
 east; all section thirty-three (33), township two (2) south, range five (5)
 east; all section three (3), township three (3) south, range five (5) east;
 all section five (5), township three (3) south, range five (5) east; south-
 east quarter and north half section seven (7), township three (3) south,
 range five (5) east; southwest quarter section seven (7), township three
 three (3) south, range five (5) east; southeast quarter section nine (9),
 township three (3) south, range five (5) east; west half section nine (9),
 township three (3) south, range five (5) east; west half section fifteen (15),
 township three (3) south, range five (5) east; all section twenty-one (21),
 township three (3) south, range five (5) east; all section seventeen (17),

township three (3) south, range five (5) east; all section nineteen (19), township three (3) south, range five (5) east; all section twenty-nine (29), township three (3) south, range five (5) east; north half section thirty-one (31), township three (3) south, range five (5) east; south half section thirty-one (31), township three (3) south, range five (5) east; northwest quarter section thirty-three (33), township three (3) south, range five (5) east; all section seven (7), township four (4) south, range five (5) east; south half section thirty-five (35), township five (5) south, range three (3) east; east half section twenty-five, township four (4) south, range four (4) east; all section one (1), township two (2) south, range five (5) east; east half section eleven (11), township two (2) south, range five (5) east; all section thirteen (13), township two (2) south, range five (5) east; east half section twenty-three (23), township two (2) south, range five (5) east; all section twenty-five (25), township two (2) south, range five (5) east; all section thirty-five (35), township two (2) south, range five (5) east; all section one (1), township three (3) south, range five (5) east; all section eleven (11), township three (3) south, range five (5) east; all section thirteen (13), township three (3) south, range five (5) east; east half section fifteen (15), township three (3) south, range five (5) east; all section twenty-three (23), township three (3) south, range five (5) east; north half northeast quarter, north half northwest quarter section twenty-five (25), township three (3) south, range five (5) east; south half northeast quarter, south half northwest quarter, and south half section twenty-five (25), township three (3) south, range five (5) east; south half northeast quarter, south half northwest quarter, and south half section twenty-seven (27), township three (3) south, range five (5) east; north half northeast quarter and north half northwest quarter, section twenty-seven (27), township three (3) south, range five (5) east; northeast quarter section thirty-three (33), township three (3) south, range five (5) east; south half section thirty-three (33), township three (3) south, range five (5) east; all section thirty-five (35), township three (3) south, range five (5) east; all section one (1), township four (4) south, range five (5) east; all section three (3), township four (4) south, range five (5) east; all section five (5), township four (4) south, range five (5) east; all section nine (9), township four (4) south, range five (5) east; all section eleven (11), township four (4) south, range five (5) east; all section thirteen (13), township four (4) south, range five (5) east; all section fifteen (15), township four (4) south, range five (5) east; all section seventeen (17), township four (4) south, range five (5) east; all section twenty-one (21), township four (4) south, range five (5) east; all section twenty-three (23), township four (4) south, range five (5) east; northeast quarter section twenty-seven (27), township four (4) south, range five (5) east; and your orator avers that said lands are of great value, to wit, of the value of one hundred and fifty thousand dollars.

4th Par. And your orator further shows that by an act of the Congress of the United States, entitled "An act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads and other purposes," approved September 29, 1890, the United States resumed title to and restored to the public domain all lands theretofore granted to aid in the construction of a railroad opposite to and coterminous with the

26 portion of any such railroad not then completed and in operation for the construction or benefit of which such lands were granted. And your orator avers that the said Northern Pacific Railroad Company had not on said 29th day of September, 1890, completed, and was not then operating, any portion of its said railroad opposite to or coterminous with any of the above-described lands, and said company has not yet built, and is not now building, and is not operating, any railroad opposite to or coterminous with said above-described lands.

5th Par. And your orator further shows that the Congress of the United States, by an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon," approved July 25, 1866, authorized such company organized under the laws of Oregon as the legislature of said State should thereafter designate to construct a railroad and telegraph line within the State of Oregon, beginning at the city of Portland and running thence through the Willamette, Umpqua, and Rogue River valleys to the southern boundary of Oregon, there to connect with another railroad authorized in said act to be built in the State of California, and granted to such Oregon company every alternate section of public land, not mineral, designated by odd numbers to the amount of twenty alternate sections per mile, ten on each side of said railroad line; and when any of said alternate sections, or parts of sections, should be found to have been granted, sold, reserved, occupied by

27 homestead settlers, preempted, or otherwise disposed of, other lands designated as aforesaid should be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections designated by odd numbers as aforesaid, nearest to and not more than ten miles beyond the limits of said first-named alternate sections; and as soon as the said company shall file in the office of the Secretary of the Interior a map of the survey of said railroad, or any portion thereof, not less than sixty continuous miles from either terminus, the Secretary of the Interior should withdraw from sale public lands therein granted on each side of said railroad, so far as located and within the limits before specified. And your orator shows that by a joint resolution adopted October 20, 1868, of the legislature of the State of Oregon, the Oregon Central Railroad Company was designated, in accordance with said last-mentioned act of Congress, as capable of receiving and undertaking the privileges, franchises, grants, and duties above set forth, and did become the corporation entitled to all the benefits and subject to all the obligations of said act of Congress, and that on or about April 4, 1870, the said Oregon and California Railroad Company, a corporation duly organized under the laws of Oregon, became the successor and assign of said Oregon Central Railroad Company.

6th Par. And your orator further shows that on the 29th day of October, 1869, the said Oregon Central Railroad Company, having theretofore in due form filed its acceptance of said grant in all respects in accordance with law, filed with the Secretary of the Interior its

28 map of definite location opposite the lands in question in this suit. Your orator shows that the said map of definite location of said road was accepted by the Secretary of the Interior on January 29, 1870, and the lands above described were in February, 1870, withdrawn in

pursuance of orders issued by the Secretary of the Interior, and the railroad of said company was duly constructed opposite these lands within the time limited by law for the completion of the said portion of said road; that on request of the said company, it having, as it alleged, 20 consecutive miles of its railroad next south of Portland ready for the service contemplated by the act pursuant to section 4 of said act of Congress of July 25, 1866, commissioners were duly appointed by the President of the United States to examine the said road, and on December 31, 1869, the said commissioners made due report of the completion and equipment of said 20 miles of railroad, as required by said act; and on January 29, 1870, the then President of the United States accepted and approved this report, and ordered patents to issue to the said company for the lands in granted limits, coterminous with said completed road; that in like manner on September 28, 1870, the report of the second set of commissioners—who had been duly appointed by the President of the United States, on like request of the said Oregon and California Railroad Company as to a second section of 20 miles next south of the section of 20 miles last above referred to—was duly made to the then President of the United States of the due completion and equipment of said second section of 20 miles, which report was duly accepted and

approved by the then President of the United States, and patents
29 in like manner ordered to issue to said company for lands in granted or place limits, coterminous with said second section of 20 miles.

This report, with the preceding one, making 40 miles in all, covered the line of said company's railroad opposite all the lands described herein, and some distance southwardly therefrom.

On said action by said Commissioners and the President, on May 9, 1871, July 12, 1871, June 22, 1876, and June 18, 1877, there were issued and delivered in the usual form, by the officers whose duty it was to execute and issue patents in such cases when patents might properly issue, patents for a large amount of lands, in which total are included the lands embraced and described in this bill.

And your orator files herewith and makes a part hereof certified copies of said patents, the same being designated as "Exhibit M," and your orator shows that all the lands hereinbefore described are within the limits of the grant as prescribed in said act of July 25, 1866, whether place or indemnity. And your orator shows that the entire line of railroad of the said Oregon and California Railroad Company has been fully constructed and been duly accepted by the President of the United States after due reports by Commissioners on the several sections thereof, and has been continuously, and still is, operated by said company; but a portion of said road, to wit, one hundred and sixty-three (163) miles, was constructed after July 1, 1880. But your orator avers that the ministerial officers
30 of your orator acted erroneously and contrary to law in issuing the patents for the lands described herein under the facts as stated herein, and so your orator avers that said patent are void and should be so declared. But said company still claims title to said lands under said patents and withholds the said lands from orator.

Orator also files herewith and makes part hereof, marked "Exhibit L," a copy of the map of the definite location of the Oregon Central Railroad of January 29, 1870, and the orders of withdrawal upon it made by the then Secretary of the Interior.

And orator asks that all the acts and resolutions of the Congress of the United States referred to in this bill may be treated as though fully recited and set out herein.

7th par. Your orator would further show that it is informed and believes, and so charges the fact to be, that one John A. Hurlburt claims to be the owner in fee simple of the following tracts of land involved in the controversy, viz: The southeast quarter and the south half of the northeast quarter of section No. three, township No. one south, range four east, Multnomah County, Oregon; his claim of title being as follows: Patent from the United States to the Oregon and California Railroad Company purported to convey said lands to said company, the same being one of the patents sought to be canceled as a whole or in part by this bill.

On February 7, 1880, the said Oregon and California Railroad Company, for a valuable consideration paid it by said Hurlburt, sold said lands to him, Hurlburt, and by its deed of conveyance, warranty in form,

dated February 26, 1880, said company conveyed the said lands, 31 so far as it could by deed convey the same, to said Hurlburt, who thereupon, at said last-named date, went into actual possession of said lands and made valuable and permanent improvements thereon, and has remained in possession thereof to this date, the value of said lands and improvements being at this time the sum of six thousand dollars.

Also, that one Thomas L. Evans claims to be the owner in fee simple of the following-described lands, viz: The northeast quarter of the northeast quarter and the east half of the northwest quarter of the northeast quarter of section three, township No. one south, range four east, in said Multnomah County, Oregon; that these lands were embraced in one of the said patents purporting to convey the said lands by the United States to said Oregon and California Railroad Company.

These lands were sold by said company for a valuable consideration to Jacob Goldstrap, and conveyed by the warranty deed (so far as said company could convey) on November 5, 1879, to said Goldstrap. Goldstrap by his deed conveyed the said land (so far as he could convey) to one Sylvester E. Evans, who, by his warranty deed, conveyed (so far as he could convey) said lands to Thomas L. Evans, July 13, 1883. Said lands have upon them valuable and permanent improvements placed there by said Thomas L. Evans, who went into possession of said lands at the date of the conveyance to him, and has remained in possession of the same to this date. The value of these lands at this time is four thousand dollars.

Said John A. Hurlburt and Thomas L. Evans each claim the 32 title to said lands respectively in fee simple, and your orator concedes that they were severally purchased and granted from the said Oregon and California Railroad Company in good faith for value, relying on the apparent title to said lands under said patent, from orator to said railroad company, and without actual notice of any defect in the title of said company to said lands, as set forth in this bill.

But orator insists that they were chargeable with constructive notice of the several acts of Congress, and that under the said acts of Congress and the acts and doings of the said railroad company no title could pass

to said Hurlburt and Evans, and that said patent should be canceled as to them as well as to the grantee therein, the said Oregon and California Railroad Company.

8th par. And your orator further shows that the Congress of the United States, by an act entitled "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes," approved March 3, 1887, directed and authorized the Secretary of the Interior to adjust all grants theretofore unadjusted, and if it should appear that any lands have been erroneously patented to any railroad company, to make demand for relinquishment or reconveyance, and if such company should refuse to reconvey within ninety days, then it should be the duty of the Attorney-General to commence and prosecute in the proper court the necessary proceedings to cancel such patents and restore the title to the United States. And your orator avers that on the 23rd day of March,

1892, the total grant of lands in the State of Oregon under said act of July 25, 1866, to said Oregon Railroad Company, to the rights of which the said Oregon and California Railroad Company has succeeded as aforesaid, was unadjusted, and the Secretary of the Interior, regarding the said patents to the above-described lands as erroneously issued, directed the Commissioner of the General Land Office to request reconveyance as provided by statute, and in accordance with such direction the Commissioner of the General Land Office did, on said 23rd day of March, 1892, make demand of the said railroad company, by a letter addressed to one G. H. Andrews, acting land agent of said railroad company, for the reconveyance of said above-described lands, and your orator avers that on the second day of April, 1892, said G. H. Andrews, acting land agent as aforesaid, did, on behalf of said company, by letter addressed to the Commissioner of the General Land Office, refuse to so reconvey said lands, and that the approval of the president of said company was endorsed on such letter, and your orator avers that said company has ever since refused, and still does refuse, to reconvey said lands.

Forasmuch, therefore, as your orator is without adequate remedy in a court of law, and to the end that the said defendants may, if they can, show why your orator should not have the relief hereinafter prayed, and the matters herein may be determined according to equity and good conscience, your orator brings this suit, and prays that the patent or patents, or part or parts thereof, purporting to convey title to said above-described lands may be set aside, canceled, and decreed null and void, and

34 that the said alleged conveyances from said railroad company, or any person or persons purporting to convey title pretended to be derived from the United States under any patent or patents to said railroad company in and to said above-described lands, may be canceled, set aside, and decreed to be null and void, and your orator prays all other and proper relief in the premises.

And may it please your honors to grant unto your orator the writ of subpoena issuing out of and under the seal of this court, directed to the defendants, the Oregon and California Railroad Company, John A. Hurlburt, and Thomas L. Evans, commanding them and each of them at a certain day and under a certain penalty, therein to be specified, personally to be and appear in this court, and then and there to answer, "but

not under oath" (answer under oath being hereby expressly waived), herein, and to stand to, perform, and abide such order and decree as to your honors may seem proper.

W. H. H. MILLER,
Attorney-General of the United States.
FRANKLIN P. MAYN,
U. S. Attorney.

(Endorsed:) Filed February 3, 1893. R. H. Lamson, clerk.

And afterwards, to wit, on the 6th day of March, 1893, there was duly filed in said court a *præcipe* for appearance of defendants, in words and figures as follows, to wit:

35 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES OF AMERICA, COMPLAINANT,	} No. 1982.
<i>vs.</i>	
THE OREGON & CALIFORNIA RAILROAD COMPANY,	
John A. Hurlburt, and Thomas L. Evans, de-	
fendants.	

Præcipe for appearance of defendants.

To the clerk of the above-entitled court:

You will please enter our appearance as solicitors in the above-entitled cause for the defendants, the Oregon & California Railroad Company, John A. Hurlburt, and Thomas L. Evans.

E. C. BRONAUGH.
L. L. MCARTHUR.
W. D. FENTON.

(Endorsed:) Filed and entered March 6, 1893. R. H. Lamson, clerk.

And afterwards, to wit, on the 17th day of March, 1893, there was duly filed in said court a demurrer to bill in words and figures as follows, to wit:

36 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES OF AMERICA, COMPLAINANT,	} Demurrer.
<i>vs.</i>	
THE OREGON & CALIFORNIA RAILROAD COMPANY,	
John A. Hurlburt, and Thomas L. Evans, de-	
fendants.	

Demurrer to bill of complaint.

The demurrer of the above-named defendants, the Oregon & California Railroad Company, John A. Hurlburt, and Thomas A. Evans, to the bill of complaint of the above-named complainant. These defendants,

by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true, in such manner and form as the same are therein set forth and alleged, do demur to said bill, and for cause of demurrer show :

I.

That it appeareth by the complainant's own showing by the said bill that complainant is not entitled to the relief prayed by the bill against these defendants, or either of them.

II.

That it appears by the said bill of complaint that the complainant is without equity in the premises, and is not entitled to any relief.

37

III.

That the bill of complaint does not contain any matter of equity whereon this court can ground any decree or give to the complainant any relief against these defendants, or either of them.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants do demur thereto, and pray the judgment of this honorable court whether they be compelled to make any answer to the said bill, and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

E. C. BRONAUGH,
L. L. McARTHUR,
W. D. FENTON,

*Solicitors for the Defendants, Oregon & California Railroad
Company, John A. Hurlburt, and Thomas L. Evans.*

BRONAUGH, McARTHUR, FENTON & BRONAUGH,
Counsel for Defendants.

UNITED STATES OF AMERICA,
District of Oregon, ss:

I, George H. Andrews, being first duly sworn, say I am secretary of the Oregon & California Railroad Company, one of the defendants above named, and that the foregoing demurrer is not interposed for delay.

GEO. A. ANDREWS.

38 Subscribed and sworn to before me this 15th day of March, 1893.
[SEAL.]

W. D. FENTON,
Notary Public for Oregon.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

W. D. FENTON,
*One of Solicitors for Defendants, The Oregon & California
Railroad Company, John A. Hurlburt, and Thomas L. Evans.*

STATE OF OREGON,

County of Multnomah, ss:

Due service of the within demurrer is hereby accepted in said county, Oregon, this 17th day of March, 1893, by receiving a copy thereof, duly certified to as such, by W. D. Fenton, one of attorneys for defendants.

F. P. MAYES.

By C. E. LOCKWOOD,

Attorneys for Complainant.

(Endorsed :) Filed March 17, 1893. R. H. Lamson, clerk.

And afterwards, to wit, on Thursday, the 10th day of August, 1893, the same being the 103d judicial day of the regular April term of said court—present, the honorable William B. Gilbert, United States circuit judge, presiding—the following proceedings were had in said case, to wit :

39 In the circuit court of the United States for the district of Oregon. August 10, 1893.

THE UNITED STATES

*vs.*THE OREGON AND CALIFORNIA RAILROAD
Company et al.

No. 1982.

Order setting demurrer for hearing.

Now, at this day comes the plaintiff, by Mr. Daniel R. Murphy, United States attorney, and the defendants by Mr. W. D. Fenton, of counsel ; and on motion of said plaintiff it is ordered that this cause be, and the same is hereby, set for hearing on the demurrer to the bill on Saturday, August 12, 1893.

And afterwards, to wit, on Saturday, the 12th day of August, 1893, the same being the 105th judicial day of the regular April term of said court—present, the honorable William B. Gilbert, United States circuit judge presiding—the following proceedings were had in said case, to wit :

40 In the circuit court of the United States for the district of Oregon. August 12, 1893.

THE UNITED STATES

*vs.*THE OREGON AND CALIFORNIA RAILROAD
Company et al.

No. 1982.

Order allowing amendment to bill, &c.

Now, at this day, comes the plaintiff, by Mr. Daniel R. Murphy, United States attorney, and Mr. John M. Gearin, special assistant United States attorney, and the defendants, by Mr. W. D. Fenton and Mr. L. E. Payson, who is allowed to appear specially in this cause, of counsel, and this

cause comes on to be heard upon the demurrer to the bill; whereupon, on motion of said plaintiff, it is ordered that it be allowed to file an amendment to said bill; and thereupon this cause comes on to be heard upon said demurrer standing to said bill as amended; and the court, having heard the arguments of counsel, will advise thereof.

And afterwards, to wit, on the 12th day of August, 1893, there was duly filed in said court an amendment to bill in words and figures as follows, to wit:

41 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES OF AMERICA	} In equity.
<i>vs.</i>	
THE OREGON & CALIFORNIA RAILROAD	
Company, John A. Hurlburt, and Thomas L. Evans.	

Amendment to bill.

The complainant, The United States of America, by Daniel R. Murphy, its attorney, comes, and by leave of court first had and obtained, makes this amendment to the bill of complaint filed herein, to be considered as inserted in said bill at the end of paragraph 3rd, to wit:

Your orator would further show—

1st. That no other maps of route or location of the line of the proposed railroad of said Northern Pacific Railroad Company between Wallula and Portland were ever filed either with the Secretary of the Interior or the Commissioner of the General Land Office.

2nd. That after the maps of August 4, 1870, hereinbefore referred to and marked "Exhibit A," were filed, there were two withdrawals of 20 miles each (on account of the said maps covering the said proposed line from Wallula to Portland) in Oregon, the first being based on a letter of Secretary Cox of August 13, 1870, and the second on a letter of the same officer dated October 27, 1870.

42 3rd. That these two withdrawals were all that were made in Oregon upon that portion of the line of the Northern Pacific Railroad between the points named.

4th. That no withdrawal of indemnity lands was ever ordered or made on account of said line of road between the points named.

Your orator attaches hereto and makes part of this amendment to said bill two certain certificates of the Commissioner of the General Land Office (with accompanying papers to the second) marked, respectively, "Exhibit 1" and "Exhibit 2." Orator nevertheless reserves to itself the right to insist, if it shall be so advised hereafter and herein, that said maps of August 4, 1870, marked "Exhibit A," and said map of March 6, 1865, marked "Exhibit C," to the original bill were maps of definite location of said Northern Pacific Railroad of its line from Wallula Junction to Portland, Oregon.

DANIEL R. MURPHY,
U. S. Attorney.

(Endorsed:) Filed August 12, 1893. R. H. Lamson, clerk.

And afterwards, to wit, on Friday, the 8th day of September, 1893, the same being the 128th judicial day of the regular April term of said court—present, the Honorable William B. Gilbert, United States circuit judge, presiding—the following proceedings were had in said case, to wit:

43 In the circuit court of the United States for the district of Oregon,
September 8, 1893.

THE UNITED STATES

vs.

THE OREGON AND CALIFORNIA RAILROAD
Company, John A. Hurlburt, and Thomas
L. Evans.

No. 1982.

Order overruling demurrer to bill.

This cause was heard upon the demurrer of the defendants to the bill of complaint herein, and was argued by Mr. Daniel R. Murphy, United States attorney, and Mr. John M. Gearin, special assistant United States attorney, for the plaintiff, and by Mr. W. D. Fenton and Mr. L. E. Payson, of counsel for said defendants; on consideration whereof it is ordered and adjudged that said demurrer be, and the same is hereby, overruled.

And afterwards, to wit, on the 8th day of September, 1893, there was duly filed in said court an opinion in words and figures as follows, to wit:

44 In the circuit court of the United States for the district of Oregon,
Friday, September 8, 1893.

THE UNITED STATES

vs.

THE OREGON AND CALIFORNIA RAILROAD
Company, John A. Hurlburt, and Thomas
L. Evans.

No. 1982.

Opinion on demurrer to bill.

GILBERT, J.:

By act of Congress of July 25, 1866, a grant of lands was made to the Oregon & California Railroad Company to aid in the construction of a line of railroad within the State of Oregon, beginning at Portland and running thence to the southern boundary of the State, thence to connect with a proposed line of railroad in California, running from the State line to a point of connection with the Central Pacific Railroad in the Sacramento Valley.

The grant was made in the usual form, and covered every alternate section of public land, not mineral, designated by odd sections, to the amount of 10 sections per mile on either side of the line, reserving therefrom lands granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of, for which lands indemnity was to be allowed as provided in the act. Under the provisions of this act the beneficiary filed its map of definite location for a distance of 60

45 miles south of Portland on October 29, 1869, and upon January 31, 1870, the lands within the grant for that distance were, by

the Secretary of the Interior, withdrawn from settlement. A portion of the road was thereupon constructed, and commissioners were appointed to examine and report thereon. On December 31, 1869, the commissioners reported that the road had been duly built for the first 20 miles south from Portland. On September 28, 1870, the commissioners reported the due construction of the next 20 miles. Both these reports were approved by the President, and patents for the lands coterminous with the completed road were issued to the Oregon & California Railroad Company, of dates May 9, 1871, July 12, 1871, June 22, 1876, and June 18, 1877.

The United States brings this suit to cancel said patents and to restore said lands to the public domain, upon the ground that the lands were not within the grant to said railroad company, and said patents were erroneously issued. There is involved in the suit approximately 100,000 acres of patented lands and 120,000 not patented.

The merits of the controversy are presented upon a demurrer to the bill.

It is the contention of the United States that the lands were the subject of a grant to the Northern Pacific Railroad Company prior in date to the grant to the Oregon & California Railroad Company, and that, therefore, they were not included in the grant to the latter company, but were, upon the other hand, expressly excluded therefrom by the words
46 reservation, whereby prior "granted" lands were taken out of the operation of the latter grant.

On the second day of July, 1864, by act of Congress, the Northern Pacific Railroad Company was incorporated. (13th Stat. at Large, 365.)

A portion of section 1 and secs. 2, 3, and 6 provide as follows:

"And said corporation is hereby authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph line, with the appurtenances, namely, beginning at a point on Lake Superior, in the State of Minnesota or Wisconsin; thence westerly by the most eligible railroad route, as shall be determined by said company, within the territory of the United States, on a line north of the forty-fifth degree of latitude to some point on Puget Sound, with a branch via the valley of the Columbia River to a point at or near Portland, in the State of Oregon, leaving the main trunk line at the most suitable place, not more than three hundred miles from its western terminus.

"SECTION 2. And be it further enacted, that the right of way through the public lands be, and the same is hereby, granted to said Northern Pacific Railroad Company, its successors and assigns, for the construction of a railroad and telegraph as proposed; and the right, power, and authority is hereby given to said corporation to take from the public lands adjacent to the line of said road material of earth, stone, timber, etc., for the construction thereof. Said way is granted to said rail-
47 road to the extent of two hundred feet in width on each side of said railroad, where it may pass through the public domain, including all necessary ground for station buildings, workshops, depots, machine shops, switches, sidetracks, turntables, and water stations, and the right of way shall be exempt from taxation within the territories of the United States. The United States shall extinguish, as rapidly as may be consistent with public policy, and the welfare of the said Indians, the Indian

titles to all the lands falling under the operation of this act, and acquired in the donation to the road named in this bill.

"SECTION 3. And be it further enacted, that there be, and hereby is, granted to the Northern Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure a safe and speedy transportation of the mails, troops, munitions of war, and public stores over the route of said line of railway, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line as said company may adopt through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from preemption or other claims or rights at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office; and whenever prior to said time

any of said sections or parts of sections shall have been granted, 48 sold, reserved, occupied by homestead settlers, or preempted or otherwise disposed of, other lands shall be selected by said company in lieu thereof under the direction of the Secretary of the Interior in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections; provided that if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act," etc.

Section 6 provides that the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed and as fast as may be required by the construction of said railroad, etc.

The defendants raise a question of construction of this act which, if well taken, disposes of the controversy at the outset. They urge that the grant is to be strictly construed against the grantees therein named, and that by the terms thereof land is granted only in aid of the construction of the main line of the Northern Pacific and not in aid of the branch line by way of the Columbia River Valley to Portland.

I do not so construe the language of the grant. The act authorized the company to build and operate a continuous road, "beginning at Lake Superior and running thence westerly to some point on Puget Sound, with a branch line via the Columbia River Valley to Portland."

49 It then granted to the company permission to take material for the construction of "said road" from the public lands adjacent thereto, and gave a right of way upon public lands 200 feet "on each side of said railroad." It granted lands in aid of the construction, and the grant extends to lands on each side of "said railroad line" and makes the further provision that as soon as the general route is fixed the President shall cause the granted lands to be surveyed for 40 miles on both sides of "the entire line."

Throughout the act the reference is to the road with its branches, as a single line or road. In the words of the act, the grant of land is coextensive with the grant of right of way and the grant of other privileges.

There is as much reason for confining the grant of way to the main trunk line as for confining the grant of subsidy to that portion of the road. The road with its branch is referred to as one road in the act and we have no warrant for saying it is not properly so described.

In view of the subsequent action of the company, however, it becomes immaterial whether or not there was a grant in aid of the branch line. Under the terms of the act the company had the power to locate the main line by the valley of the Columbia River if it so chose, and, as will be seen, that route was subsequently selected and maps were filed in accordance therewith, and whatever rights the Northern Pacific Company acquired to the definite sections of land involved in this suit it obtained by reason of so locating its main line.

These lands being included in the general terms of the grant in aid of the construction of the Northern Pacific Railroad, it is obvious
50 ous that they were excluded from the operation of the grant to the Oregon & California Company, unless (1) they are within the reservation contained in the grant to the Northern Pacific Company, or (2) the failure of that company to construct its road via the Columbia River Valley and to comply with the condition subsequent, upon which the grant was made, operated to take the lands out of the reservation contained in the grant to the Oregon & California Company whereby all "granted" lands were excepted therefrom.

It is urged by the defendants that the reservation contained in the grant to the Northern Pacific Railroad Company expressly excludes from that grant the lands in question in this suit.

That grant was of "every alternate section of public land," etc., "not reserved, sold, granted," etc., "at the time the line of said road is definitely fixed and a plat thereof filed in the Office of the Commissioner of the General Land Office; and whenever prior to said time any of said sections or parts of sections shall have been granted * * * or otherwise disposed of other lands shall be selected by said company in lieu thereof."

The argument is that inasmuch as prior to time of fixing the definite line of the Northern Pacific Railroad a grant of the same lands was made to the Oregon & California Company, the lands fall within the description of "granted" lands, which are expressly excepted from the operation of the prior grant. In other words, while the lands in controversy were not "granted" lands at the time of the grant to the Northern Pacific Company, so as to be excluded from the lands conferred upon

51 that company at that time, yet within the time limited thereafter in which that company could establish its right thereto, they were withdrawn from that grant by the act of Congress whereby they were bestowed upon another company, and that the contingency of such withdrawal and subsequent disposal was contemplated and provided for in the prior grant when the exception of granted lands was incorporated therein.

It is urged that there was no law to prohibit a second conditional grant of the same lands in aid of a second railroad before anything should

have been done by the first company, and with the understanding that whatever should be taken by the second company should be in subordination to the rights of the first company.

It may be conceded that the power of Congress in this direction was plenary. But the question here is not what Congress had the power to do. It is, What did Congress do? What was the intention of Congress in inserting the reservation of granted lands from the operation of the first grant?

In the light afforded by the policy of the Government in relation to the disposition of the public lands in aid of railroad construction, and in view of the settled doctrine of the courts in relation to the nature of the title which passes under such grants, it would seem that the reservation of "granted" lands was not made in contemplation of a subsequent bestowal of the lands in aid of another road. Under such a construction the object of the first grant would be liable to be wholly defeated

by a second grant, and the beneficiary of any railroad grant, while complying strictly with the conditions imposed thereupon, might be deprived of the aid upon which the construction of its road depended.

In *Mo., etc., Ry. Co. vs. Kan. Pac. Ry. Co.* (97 U. S., 498), the reservation in the first grant was of lands which were not "sold, reserved, or otherwise disposed of by the United States, and to which a preemption or homestead claim had not attached at the time the line was definitely fixed." The court, in construing the grant, speaking by Mr. Justice Field, said:

"As the sections mentioned could only be known when the route of the road was established, which might not be for years, the Government did not intend to withhold the lands in the meantime from occupation and sale, and thus retard the settlement of the country, nor to exclude the land from appropriation for public uses. And the object of the reservation was to protect the acquisition of rights in this way to lands falling within the limits of the grant and to exclude from its operation lands specially reserved and lands of a special character, such as mineral lands, other than those of iron or coal, the sale of which was seldom permitted anywhere, and swamp lands. The grant made was in the nature of a float, and the reservations excluded only specific tracts to which certain interests had attached before the grant had become definite, or which had been specially withheld from sale for public uses, and tracts having a peculiar character, such as swamp lands or mineral lands, the sale of which was then against the general policy of the Government.

It was not within its language or purpose to except from its operation any portion of the designated lands for the purpose of aiding in the construction of other roads."

In the recent case of *St. Paul & Pacific vs. Northern Pacific* (139 U. S., 17), the court said: "We are of opinion that the exception in the act of making the grant to the Northern Pacific Railroad Company was not intended to cover other grants for the *the* construction of roads of a similar character, for this would be to embody a provision which would often be repugnant to and defeat the grant itself."

But the grant to the Oregon & California Railroad Company contained a like reservation of "granted" lands, and it is next to be considered

whether the lands in controversy were so affected by the grant to the Northern Pacific Company that at the time the grant to the Oregon & California Company took effect they were "granted" lands, and were, therefore, not within the operation of the latter grant.

The nature of the grant itself and the title that passed thereunder is well settled by numerous adjudications. In *St. Paul & Pacific vs. Northern Pacific* (139 U. S., 5), Mr. Justice Field said, speaking for the court:

"As seen by the terms of the third section of the act, the grant is one in presenti; that is, it purports to pass a present title to the lands designated by alternate sections. * * * The language of the statute is that 'there be, and hereby is, granted' to the company every alternate section of lands designated, which implies that the property itself passed, not any special or limited interest in it. The words also import a trans-

fer of a present title, not a promise to transfer one in the future.
54 "The route not being at the time determined, the grant was in the nature of a float and the title did not attach to any specific sections until they were capable of identification, but when once identified the title attached to them, as of the date of the grant, except as to such sections as were specifically reserved."

The grant therefore conveyed a present title subject to be defeated upon a failure to comply with the conditions subsequent, but the right of reentry was vested only in the grantor, the United States. The United States alone could declare a forfeiture.

The Northern Pacific road was never constructed via the Columbia River Valley, or coterminous with these lands.

On March 6, 1865, a map known as the Perham map and intended by the company as a map of general route of the road was forwarded to the Secretary of the Interior by the president of the company, together with a letter, in which the president said:

"Under authority of the board of directors of the Northern Pacific Railroad Company, I have designated on the accompanying map in red ink the general line of this railroad from a point on Lake Superior in the State of Wisconsin to a point on Puget Sound in Washington Territory, via the Columbia River, adopted by said company as the line of its railroad, subject only to such variations as may be found necessary after more specific surveys," and requested that "the lands granted to the company be withdrawn from sale in conformity with law."

The map was drawn in the manner indicated in the president's
55 letter. The line intended for the main line followed the north bank of the Columbia River to a point at or near Portland, and thence to Tacoma, on Puget Sound, where it was met by the branch line which crossed the Cascade Mountains. The map was disapproved by the Commissioner of the General Land Office, and his disapproval was affirmed by the Secretary of the Interior.

The question of the effect of this map was before this court for adjudication on March 1, 1890, in the case of *United States vs. Northern Pacific Railroad Company* (41 Fed., 842), and it was held by Judge Sawyer that the company had the right, under the act of July 2, 1864, to locate its main line by way of the Columbia River through Portland, and that the Perham map was a map of general location, and that the

failure of the Secretary of the Interior to give notice thereupon of the withdrawal of the lands from preemption, sale, etc., could not affect the rights of the company, for the act itself withdrew the lands upon the filing of the map, or, as expressed in the act, "after the general route shall have been fixed," which was done by filing the map of the route selected. The court said: "The company by filing the map had indicated its line, and the grant, before uncertain, now became certain, and attached to the odd sections of the land within the 40-mile limit. No notice was required to be given by the Secretary." Citing Butts vs. Railroad Co. (119 U. S., 55).

It is urged that that decision loses its force as a precedent from the fact that the rejection of the Perham map by the Commissioner of the Land Office and by the Secretary of the Interior was not brought
56 to the attention of the court. It appears that the facts in regard to the Perham map were in that case agreed upon by the stipulation of the parties to the suit. It was stipulated that the map showed "the preliminary location of the company's railroad line from a point on Puget Sound," etc., and that "no action was taken by the Interior Department upon the map or the request accompanying it."

I am unable to perceive how the action of the officers of the Department could have affected the question that was then before the court. The matter under consideration was the action of the Northern Pacific Railroad Company, not what was done by the officers of the General Land Office.

Their action could not affect the question that was then before the court or the question that is now presented in this case.

The inquiry is whether or not the Northern Pacific Company fixed the line of its general route as early as March 6, 1865, by making and filing the Perham map. That the map when filed was unsatisfactory to the officers of the Government, or was disapproved by them, is a matter foreign to the question.

Whether or not it was a map sufficient for the purpose indicated must be determined by recourse to the map itself. The inquiry is not aided by reference to the action of the officers of the Interior Department. They were not clothed with power to prejudice the rights of the company. But when their action is further considered it appears that the extent of their disapproval was their refusal to withdraw the adjacent
57 lands from settlement. This could not prevent the withdrawal, for, as said in the decision just quoted, the law itself made the withdrawal.

The Commissioner said: "The evidence required of the route under the established ruling of the department is a connected map showing the exact location, the map indicating by flagstaffs the progress of the survey. * * * That proof is required to show the precise portions of each section or smallest legal subdivision cut by the road. * * * Now, in this view the Commissioner reports that no withdrawal should be ordered until the map of actual survey, authenticated as indicated, shall be filed in the district and general land offices."

It will thus be seen that in the estimation of the officers of the General Land Office the Perham map was insufficient, because it was not a map of the final and definite location of a surveyed road, and because it

had not also been filed by the company in the district land offices in which the lands were situate, neither of which is required by the act.

In construing this act in *Butts vs. Nor. Pac. Ry. Co.* (119 U. S., 55), Mr. Justice Field said: "The general route may be considered as fixed when its general course and direction are determined after an actual examination of the country, or from a knowledge of it, and is designated by a line on the map showing the general features of the adjacent country and the places through or by which it will pass. * * * When the general route of the road is thus fixed in good faith, and information thereof given to the Land Department by filing the map thereof with the Commissioner of the General Land Office or the Secretary of the Interior, the law withdraws from sale or preemption the odd sections to the extent of forty miles on each side."

It is contended further that the grant to the Northern Pacific Company of July 2, 1864, is wholly superseded and canceled by the joint resolution of Congress of May 31, 1870 (16 Stats. at Large, 378), and that whatever rights that company has in the public lands it takes from the latter date, having accepted the grant contained in the joint resolution in lieu of the earlier grant.

I do not so understand the joint resolution. It begins with a recognition of the incorporation of the company under the prior act. It proceeds to confer upon the company power to mortgage its property. It expressly authorizes the company to make the change in its line by constructing the main line down the valley of the Columbia River, with power to build a branch line across the Cascade Mountains, as indicated in the Perham map. It recognizes the existence and perpetuation of the prior land grant by providing for the substitution of other lands "in the event of there not being in any State or Territory in which said main line or branch may be located at the time of the final location thereof the amount of lands granted by Congress to said company within the limits prescribed by its charts." There is in the joint resolution other recognition of the "grants and duties" provided for in the act of incorporation, and nothing can be found indicative of a purpose to abrogate the prior act or to substitute a new and independent grant therefor.

On the 13th day of August, 1870, the company filed a second map, designating the main line by way of the north bank of the Columbia River, as in the Perham map. It was a map of definite location, and thereupon the Secretary of the Interior formally withdrew the lands and issued his notice. Whatever objection may be urged to the Perham map, it must be conceded that the map of August 13, 1870, in all respects complied with the act, and that then, if not before, the line of the Northern Pacific road became definite and fixed.

In the view I take of the law it would make no difference with the rights of the parties to this suit if the Perham map had not been filed. The grant to the Northern Pacific being prior in date to the grant to the Oregon & California, and the reservation of granted lands from the first grant being held not to refer to lands subsequently granted in aid of another road, the first grant remained prior and superior to the second, and there could be no reversal of the order of their priority, resulting either from the fact that the grantee, under the junior grant, filed its map of definite location and constructed a portion of its road before any map

was filed of the line of road under the older grant, or from the further fact that in the final construction of the Northern Pacific road no portion thereof was established upon the line either of the Perham map or the map of 1870. Congress did not offer these lands to the competition of the two companies, and it was not the intention that the more diligent of the two corporations should secure them.

I hold that the failure of the Northern Pacific to construct its road by way of the Columbia River valley, the forfeiture of its grant
60 therefor declared by Congress in 1890, and the construction by the Oregon & California Company of its road in apt time under its grant of July, 1866, are all matters foreign to the question under consideration. The fact remains that the lands in controversy were granted lands at the time the grant to the Oregon & California Company took effect. They were, therefore, not the subject of the grant to that company. When that grant was made the beneficiary thereof had full notice of the prior grant, and had reason to understand that the lands so devoted to aid the construction of the other road were not within the purview of its own grant, and were not promised it by the United States.

Under these circumstances it can not be justly said, as urged by counsel for the defendants, that the United States is now placed in the attitude of breaking faith with the Oregon & California Company.

That patents were issued to the defendant company for these lands does not affect the decision of this case upon the demurrer. The public lands of the United States are held in trust for the people, and can not be disposed of by the unauthorized acts of the agents or officers of the Government. The demurrer to the bill must be overruled.

GILBERT, *Judge*.

Mr. Daniel R. Murphy and Mr. John M. Gearin, for the plaintiff;
Mr. W. D. Fenton, Mr. L. E. Payson, for the defendants.

61 (Endorsed:) Filed September 8, 1893. R. H. Lamson, clerk.
And afterwards, to wit, on Monday, the 11th day of September, 1893, the same being the 130th judicial day of the regular April term of said court, present, the Honorable Charles B. Bellinger, United States district judge, presiding, the following proceedings were had in said case, to wit:

In the circuit court of the United States for the district of Oregon.
September 11, 1893.

THE UNITED STATES	}	No. 1982.
<i>vs.</i>		
THE OREGON AND CALIFORNIA RAILROAD		
Company et al.		

Order extending time to file answer.

Now, at this day, on motion of Mr. W. D. Fenton, of counsel for the defendants, it is ordered that said defendants be, and they are hereby, allowed until Saturday, September 16, 1893, within which to answer the bill of complaint herein.

And afterwards, to wit, on Saturday, the 16th day of September, 1893, the same being the 135th judicial day of the regular April term of said court, present, the Honorable Charles B. Bellinger, United States district judge, presiding, the following proceedings were had in said case, to wit:

62 In the circuit court of the United States for the district of Oregon.
September 16, 1893.

THE UNITED STATES	}	No. 1982.
<i>vs.</i>		
THE OREGON AND CALIFORNIA RAILROAD Company et al.		

Order extending time to file answer.

Now, at this day, comes the plaintiff, by Mr. Daniel R. Murphy, United States attorney, and the defendants, by Mr. W. D. Fenton, of counsel, and on motion of said defendants it is ordered that they be, and they are hereby, allowed sixty days from this date in which to answer the bill herein.

And afterwards, to wit, on Friday, the 3d day of November, 1893, the same being the 29th judicial day of the regular October term of said court, present, the Honorable Charles B. Bellinger, United States district judge, presiding, the following proceedings were had in said case, to wit:

63 In the circuit court of the United States for the district of Oregon.
November 3, 1893.

THE UNITED STATES	}	No. 1982.
<i>vs.</i>		
THE OREGON AND CALIFORNIA RAILROAD Company et al.		

Order extending time to file answer.

Now, at this day, on motion of Mr. W. D. Fenton, of counsel for the defendants, it is ordered that the time allowed said defendants within which to file their answer to the bill herein be, and the same is hereby, extended twenty days.

And afterwards, to wit, on Friday, the 23d day of November, 1893, the same being the 47th judicial day of the regular October term of said court, present, the Honorable Charles B. Bellinger, United States district judge, presiding, the following proceedings were had in said case, to wit:

In the circuit court of the United States for the district of Oregon.
November 23, 1893.

THE UNITED STATES	}	No. 1982.
<i>vs.</i>		
THE OREGON AND CALIFORNIA RAILROAD Company et al.		

Order extending time to file answer.

64 Now, at this day, on motion of Mr. W. D. Fenton, of counsel for the defendants, it is ordered that said defendants be, and they

are hereby, allowed until January 10, 1894, within which to file their answer herein.

And afterwards, to wit, on Tuesday, the 26th day of December, 1893, the same being the 73d judicial day of the regular October term of said court, present, the Honorable Charles B. Bellinger, United States district judge, presiding, the following proceedings were had in said case, to wit:

In the circuit court of the United States for the district of Oregon.
December 26, 1893.

THE UNITED STATES	}	No. 1982.
<i>vs.</i>		
THE OREGON AND CALIFORNIA RAILROAD		
Company et al.		

Order extending time to file answer.

Now, at this day, comes the plaintiff, by Mr. Daniel R. Murphy, United States attorney, and the defendants, by Mr. W. D. Fenton, of counsel, and, on motion of said defendants, it is ordered that the time allowed said defendants in which to file their answer herein be, and the same is hereby, extended until February 10th, 1894.

And afterwards, to wit, on Monday, the 5th day of February, 1894, the same being the 108th judicial day of the regular October term of said court, present, the Honorable Charles B. Bellinger, United States district judge, presiding, the following proceedings were had in said case, to wit:

In the circuit court of the United States for the district of Oregon.
February 5, 1894.

THE UNITED STATES	}	No. 1982.
<i>vs.</i>		
THE OREGON AND CALIFORNIA RAILROAD		
Company et al.		

Order extending time to file answer.

Now, at this day, on motion of Mr. W. D. Fenton, of counsel for defendants, it is ordered that the time heretofore allowed said defendants in which to file their answer herein be, and the same is hereby, extended until March 5th, 1894.

And afterwards, to wit, on Monday, the 26th day of February, 1894, the same being the 126th judicial day of the regular October term of said court, present, the Honorable Charles B. Bellinger, United States district judge, presiding, the following proceedings were had in said case, to wit:

In the circuit court of the United States for the district of Oregon. February 26, 1894.

THE UNITED STATES	}	No. 1982.
<i>vs.</i>		
OREGON AND CALIFORNIA RAILROAD Co.)		

Order extending time to file answer.

Now, at this day, comes the plaintiff, by Mr. Daniel R. Murphy, United States attorney, and the defendants, by Mr. W. D. Fenton, of

counsel, and on motion of said defendants it is ordered that said defendants be, and they are hereby, allowed until Monday, April 2, 1894, in which to file their answer herein.

And afterwards, to wit, on Saturday, the 31st day of March, 1894, the same being the 155th judicial day of the regular October term of said court, present, the Honorable Charles B. Bellinger, United States district judge, presiding, the following proceedings were had in said case, to wit:

67 In the circuit court of the United States for the district of Oregon. March 31, 1894.

THE UNITED STATES	}	No. 1982.
<i>vs.</i>		
THE OREGON AND CALIFORNIA RAILROAD Company et al.		

Order extending time to file answer.

Now, at this day, on motion of Mr. Daniel R. Murphy, U. S. attorney, it is ordered that the defendants herein be, and they are hereby, required to make answer to the bill of complaint herein on or before Monday, April 9, 1894.

And afterwards, to wit, on Friday, the 13th day of April, 1894, the same being the 5th judicial day of the regular April term of said court, present, the Honorable Charles B. Bellinger, United States district judge, presiding, the following proceedings were had in said case, to wit:

68 In the circuit court of the United States for the district of Oregon. April 13, 1894.

THE UNITED STATES	}	No. 1982.
<i>vs.</i>		
THE OREGON & CALIFORNIA RAILROAD Company et al.		

Order extending time to file answer.

Now, at this day, on motion of Mr. W. D. Fenton, of counsel for the defendants, it is ordered that this cause be, and the same is hereby, continued until May , 1894.

And afterwards, to wit, on Friday, the 4th day of May, 1894, the same being the 23d judicial day of the regular April term of said court, present, the Honorable Charles B. Bellinger, United States district judge, presiding, the following proceedings were had in said case, to wit:

In the circuit court of the United States for the district of Oregon. May 4, 1894.

THE UNITED STATES	}	No. 1982.
<i>vs.</i>		
THE OREGON AND CALIFORNIA RAILROAD Co. et al.		

Order extending time to file answer.

69 Now, at this day, on motion of Mr. W. D. Fenton, of counsel for the defendants, it is ordered that the time to answer the bill herein be, and the same is hereby, extended to Monday, June 4, 1894.

And afterwards, to wit, on Friday, the 1st day of June, 1894, the same being the 47th judicial day of the regular April term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

In the circuit court of the United States for the district of Oregon,
June 1, 1894.

THE UNITED STATES	}	No. 1982.
<i>vs.</i>		
THE OREGON AND CALIFORNIA RAILROAD CO.		
et al.		

Order extending time to file answer.

Now, at this day, on motion of Mr. W. D. Fenton, of counsel for the defendants, it is ordered that the defendants herein be, and they are hereby, allowed until Monday, June 18, 1894, in which to file their answer herein.

And afterwards, to wit, on Friday, the 15th day of June, 1894, the same being the 59th judicial day of the regular April term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

70 In the circuit court of the United States for the district of Oregon,
June 15, 1894.

THE UNITED STATES	}	No. 1982.
<i>vs.</i>		
OREGON AND CALIFORNIA RAILROAD CO.		
et al.		

Order extending time to file answer.

Now, at this day, on motion of Mr. W. D. Fenton, of counsel for the defendants, it is ordered that the defendants be, and they are hereby, allowed until Monday, June 25, 1894, in which to file their answer herein.

And afterwards, to wit, on the 25th day of June, 1894, there was duly filed in said court an answer, in words and figures as follows, to wit:

In the circuit court of the United States for the district of Oregon.

UNITED STATES OF AMERICA, COMPLAINANT,	}	In equity.
<i>against</i>		
THE OREGON AND CALIFORNIA RAILROAD COMPANY, JOHN A. HURLBURT, and THOMAS L. EVANS,		
defendants.		

71 *Answer to bill of complaint.*

The joint and several answer of The Oregon and California Railroad Company, John A. Hurlburt, and Thomas L. Evans to the bill of complaint in this suit as amended.

The Oregon and California Railroad Company, John A. Hurlburt, and Thomas L. Evans, defendants in the above-entitled suit, saving and

reserving to themselves, and each of them, all benefit or advantage of exception, or otherwise, to which they, or either of them, may be or become entitled by reason of the many errors, uncertainties, and insufficiencies of the bill of complaint of the complainant herein as amended, for answer thereto, or to so much and such parts or portions thereof as it may be material or necessary for them, or either of them, to answer unto, answering say:

First. They jointly and severally aver that the map alleged in the third paragraph of the said bill to have been received on March 6, 1865, by the then Secretary of the Interior from Josiah Perham was never accepted by the Secretary of the Interior or the Commissioner of the General Land Office; but, on the contrary, was, for good and sufficient cause, disapproved and rejected by them, and each of them, and said map was wholly ineffective as a map of general route or definite location, or for any purpose whatsoever; and that after its rejection by the said Secretary of the Interior and the Commissioner of the General Land

Office it was not regarded or treated by the said Northern Pacific Railroad Company, or by the Secretary of the Interior, or the Commissioner of the General Land Office, or the Interior Department of the United States as a valid map for any purpose, and that no subsequent action was ever had or taken as to said map either by said company, or the Secretary of the Interior, or the Commissioner of the General Land Office, or the Interior Department of the United States.

Second. They jointly and severally aver that the two maps referred to in said third paragraph of said bill, as two maps of general route, which on August 4, 1870, were presented to the then Secretary of the Interior by Edwin F. Johnson, never became or were maps of definite location of the Northern Pacific Railroad, or of any line of railroad of the said Northern Pacific Railroad Company, or anything more than maps of general route, and they jointly and severally deny that any map of definite location of the said Northern Pacific Railroad, or of any line of railroad of the Northern Pacific Railroad Company, between Wallula, Washington, and Portland, Oregon, or its vicinity, or opposite the lands in controversy in this suit, or any thereof, was ever presented to or filed with the Secretary of the Interior, or the Commissioner of the General Land Office, or the Interior Department of the United States, and they jointly and severally deny that any withdrawal of indemnity lands was ever made on account of said railroad or railroad line between the said points, or opposite the said lands, or at any of them.

Third. These defendants further, jointly and severally, deny that all the lands in controversy in this suit were within the place limits of the proposed line of railroad of the Northern Pacific Railroad Company, as designated by the maps of August 4, 1870, hereinbefore referred to, or that all of such lands were within the limits of any withdrawal, duly or properly ordered in respect thereof, and they are advised and believe, and therefore aver, that the said Northern Pacific Railroad Company was not and never became in anywise entitled or to a withdrawal of any lands within the State of Oregon opposite the line shown on said maps, or any part thereof, which were distant more than twenty miles from the proposed line of railroad as indicated upon said map. They therefore jointly and severally deny that any lands in controversy

in this suit which were distant more than twenty miles from the said proposed line of railroad could be within any place limits of said railroad, or could be lawfully withdrawn in respect thereof, and they further aver the fact to be that there have been patented to the said Oregon and California Railroad Company, under its claim thereto under the act of July 25, 1866, referred to in the said bill, about 56,000 acres of said lands distant more than twenty miles from said line of general route of said Northern Pacific Railroad.

Fourth. These defendants, further answering, jointly and severally deny that the ministerial officers of the complainant acted in anywise erroneously or contrary to law in issuing patents to the defendant, the Oregon and California Railroad Company, for the lands, or any of the lands, described in said bill, either under the facts as stated in said bill or otherwise howsoever, and they deny that said patents, or any of them, are void either in whole or in part, or should be so declared, or should be canceled as to the Oregon and California Railroad Company, the grantee therein, or otherwise.

Fifth. These defendants, John A. Hurlburt and Thomas L. Evans, jointly and severally, deny that they were chargeable with constructive notice of the several acts of Congress referred to in said bill, and jointly and severally deny that under said acts of Congress and the acts and doing of the said railroad company no title could pass to said Hurlburt and Evans, and jointly and severally deny that any patent or patents referred to in said bill should be canceled as to them or either of them.

Sixth. And the said defendant, the Oregon and California Railroad Company, further answering, says that, besides the land sold to its codefendants, John A. Hurlburt and Thomas L. Evans, as alleged in the said bill, this defendant from time to time before complainant's demand for reconveyance of any of the lands involved in this suit sold to divers other persons and parties, at the times stated in the schedule marked A attached to and forming part of this answer, divers parts and portions of the lands in controversy in this suit as stated in said schedule, and the persons and parties to whom such sales have been respectively made, purchased the several parts and portions of such lands so sold to them in good faith for full and valuable consideration and without notice or knowledge of any alleged defect in the title of said Oregon & California Railroad Company to said lands, or of any claim of

the United States thereto, or in respect thereof, and that such purchasers or their transferees, or a large portion thereof, have entered into actual possession of said lands, and have remained in possession thereof to this date, and made valuable and permanent improvements thereon.

And this defendant further alleges that all such sales were made prior to the time of the assertion by the complainant of any claim that the lands in controversy in this suit had not passed to and become the property of this defendant, under and by virtue of the said act of July 25th, 1866, referred to in said bill.

Seventh. And these defendants, further answering, jointly and severally, insist that none of the matters in said complainant's bill of complaint mentioned and set forth are matters in respect of which said complainant is entitled to relief in a court of equity, and they therefore ask to have

the same benefit of defense thereto as if they had demurrer to said bill.

Wherefore the defendants, jointly and severally, humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

[SEAL] OREGON AND CALIFORNIA RAILROAD COMPANY,
By R. KOEHLER, *Second Vice-President*.

OREGON AND CALIFORNIA RAILROAD COMPANY,
By GEO. H. ANDREWS, *Its Secretary*.

Attest:

GEO. H. ANDREWS, *Secretary O. & C. R. R. Co.*,
And JOHN A. HURLBURT,
THOMAS L. EVANS,

Defendants above Named.

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E. C. BRONAUGH,

L. L. McARTHUR,

W. D. FENTON,

E. C. BRONAUGH, JR.,

Solicitors of said Defendants.

BRONAUGH, McARTHUR,

FENTON & BRONAUGH,

Counsel for said Defendants.

STATE OF OREGON,

County of Multnomah, District of Oregon, ss:

I, R. Koehler, and I, Geo. H. Andrews, being first duly sworn, each for myself and not for the other, on my oath do depose and say, that I, Geo. H. Andrews, and secretary, and I, R. Koehler, and second vice-president of the Oregon & California Railroad Company, one of the defendants named in the foregoing answer, that I have read the foregoing answer and know its contents; that so much of the allegations of said answer as are not stated upon information and belief are true; that as to the matters and things therein stated upon information and belief, I verily believe the same to be true.

R. KOEHLER,

GEO. H. ANDREWS,

Subscribed and sworn to before me this 25th day of June, A. D. 1894.

[SEAL.]

W. D. FENTON,

Notary Public for Oregon.

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EXHIBIT A. (To answer.)

Sold Oct. 17, 1889, part of sec. 35, Tp. 1 S., R. 1 E.,	3.87 acres.
" July 31, 1874, " 11, " 1 S., " 2 E.,	37.66 "
" June 7, 1878, " 9, " 1 S., " 2 E.,	40 "
" July 31, 1874, " 15, " 1 S., " 2 E.,	40 "
" Sept. 18, 1875, " 23, " 1 S., " 2 E.,	47.48 "
" April 1, 1879, " 23, " 1 S., " 2 E.,	40 "
" July 3, 1879, " 23, " 1 S., " 2 E.,	292.21 "
" Dec. 5, 1881, " 27, " 1 S., " 2 E.,	40 "
" May 21, 1879, " 27, " 1 S., " 2 E.,	80 "
" May 29, 1875, " 29, " 1 S., " 2 E.,	74.30 "
" Sept. 19, 1874, " 29, " 1 S., " 2 E.,	62 "

EXHIBIT A. (To answer.)—Continued.

Sold July 31, 1874, part of sec.	5, Tp. 1 S., R. 3 E.,	205.92 acres.
" April 22, 1878, "	5, " 1 S., " 3 E.,	41.50 "
" May 10, 1889, "	5, " 1 S., " 3 E.,	5.43 "
" July 31, 1874, "	7, " 1 S., " 3 E.,	80 "
" Nov. 10, 1874, "	13, " 1 S., " 3 E.,	40 "
" Nov. 22, 1871, "	15, " 1 S., " 3 E.,	80 "
" Jan. 19, 1878, "	17, " 1 S., " 3 E.,	2.95 "
" Jan. 19, 1878, "	17, " 1 S., " 3 E.,	3.23 "
" Sept. 11, 1889, "	17, " 1 S., " 3 E.,	21.45 "
" July 22, 1889, "	19, " 1 S., " 3 E.,	8.14 "
" Oct. 12, 1878, "	21, " 1 S., " 3 E.,	40 "
" Aug. 28, 1878, "	21, " 1 S., " 3 E.,	80 "
" Feby. 28, 1879, "	21, " 1 D., " 3 E.,	80 "
" Aug. 31, 1882, "	21, " 1 S., " 3 E.,	102.40 "
" Feby. 26, 1889, "	21, " 1 S., " 3 E.,	40 "
" Aug. 28, 1879, "	23, " 1 S., " 3 E.,	80 "
" Nov. 6, 1885, "	25, " 1 S., " 3 E.,	10 "
" July 30, 1879, "	25, " 1 S., " 3 E.,	24.76 "
" June 28, 1879, "	25, " 1 S., " 3 E.,	80 "
" June 14, 1879, "	25, " 1 S., " 3 E.,	160 "
" June 24, 1874, "	25, " 1 S., " 3 E.,	40 "
" Mar. 29, 1882, "	25, " 1 S., " 3 E.,	40 "
" Aug. 30, 1879, "	27, " 1 S., " 3 E.,	80 "
" Sept. 15, 1885, "	27, " 1 S., " 3 E.,	80 "
" Feby. 5, 1878, "	27, " 1 S., " 3 E.,	160 "
" Feby. 25, 1889, "	29, " 1 S., " 3 E.,	40 "
" Jan. 9, 1889, "	29, " 1 S., " 3 E.,	40 "
" Oct. 23, 1888, "	29, " 1 S., " 3 E.,	12.20 "
" July 3, 1882, "	29, " 1 S., " 3 E.,	52.20 "
" Aug. 7, 1882, "	29, " 1 S., " 3 E.,	40 "
" April 30, 1883, "	29, " 1 S., " 3 E.,	40 "
" June 14, 1882, "	29, " 1 S., " 3 E.,	52.20 "
" April 11, 1886, "	29, " 1 S., " 3 E.,	80 "
" Feby. 16, 1876, "	29, " 1 S., " 3 E.,	35.09 "
" Aug. 10, 1882, "	31, " 1 S., " 3 E.,	80 "
" Dec. 2, 1889, "	31, " 1 S., " 3 E.,	92.90 "
" Dec. 16, 1879, "	33, " 1 S., " 3 E.,	40 "
" Dec. 30, 1881, "	33, " 1 S., " 3 E.,	80 "
" Aug. 21, 1880, "	33, " 1 S., " 3 E.,	40 "
" Dec. 31, 1886, "	33, " 1 S., " 3 E.,	120 "
" Dec. 31, 1886, "	35, " 1 S., " 3 E.,	400 "
" July 26, 1879, "	1, " 1 S., " 4 E.,	39.44 "
" July 25, 1882, "	1, " 1 S., " 4 E.,	39.06 "
" Aug. 22, 1879, "	1, " 1 S., " 4 E.,	78.69 "
" July 23, 1883, "	1, " 1 S., " 4 E.,	40 "
" June 10, 1891, "	1, " 1 S., " 4 E.,	40 "
" Mar. 9, 1882, "	1, " 1 S., " 4 E.,	80 "
" June 9, 1881, "	1, " 1 S., " 4 E.,	40 "
" Aug. 17, 1889, "	1, " 1 S., " 4 E.,	200 "
" Nov. 5, 1879, "	3, " 1 S., " 4 E.,	76.96 "
" Feby. 16, 1876, "	3, " 1 S., " 4 E.,	77.92 "
" Mar. 10, 1881, "	3, " 1 S., " 4 E.,	80 "
" Aug. 14, 1883, "	3, " 1 S., " 4 E.,	160 "
" Jan. 7, 1880, "	3, " 1 S., " 4 E.,	240 "
" Feby. 16, 1876, "	11, " 1 S., " 4 E.,	80 "
" Aug. 17, 1876, "	11, " 1 S., " 4 E.,	40 "
" June 9, 1885, "	11, " 1 S., " 4 E.,	40 "
" July 7, 1886, "	11, " 1 S., " 4 E.,	40 "
" Sept. 15, 1891, "	11, " 1 S., " 4 E.,	40 "
" Aug. 29, 1889, "	11, " 1 S., " 4 E.,	40 "
" Sept. 29, 1884, "	11, " 1 S., " 4 E.,	40 "
" Feby. 19, 1883, "	11, " 1 S., " 4 E.,	200 "
" Feby. 19, 1883, "	13, " 1 S., " 4 E.,	120 "
" May 24, 1889, "	13, " 1 S., " 4 E.,	40 "
" July 26, 1888, "	13, " 1 S., " 4 E.,	40 "
" May 25, 1888, "	13, " 1 S., " 4 E.,	40 "
" May 25, 1888, "	13, " 1 S., " 4 E.,	40 "
" May 25, 1888, "	13, " 1 S., " 4 E.,	40 "

EXHIBIT A. (To answer.)—Continued.

79	Sold Sept. 3, 1888, part of sec. 13, Tp. 1 S., R. 4 E.,	80	acres.
	" Oct. 26, 1882, " 13, " 1 S., " 4 E.,	80	"
	" Nov. 27, 1876, " 13, " 1 S., " 4 E.,	160	"
	" June 8, 1885, " 15, " 1 S., " 4 E.,	40	"
	" July 3, 1891, " 15, " 1 S., " 4 E.,	120	"
	" Aug. 28, 1889, " 15, " 1 S., " 4 E.,	40	"
	" Feby. 5, 1881, " 15, " 1 S., " 4 E.,	40	"
	" July 2, 1881, " 15, " 1 S., " 4 E.,	40	"
	" April 30, 1890, " 15, " 1 S., " 4 E.,	40	"
	" May 24, 1882, " 15, " 1 S., " 4 E.,	160	"
	" Mar. 29, 1883, " 17, " 1 S., " 4 E.,	160	"
	" Jan. 9, 1891, " 23, " 1 S., " 4 E.,	80	"
	" Sept. 2, 1889, " 23, " 1 S., " 4 E.,	40	"
	" Mar. 15, 1892, " 23, " 1 S., " 4 E.,	80	"
	" April 29, 1891, " 23, " 1 S., " 4 E.,	80	"
	" Aug. 1, 1883, " 23, " 1 S., " 4 E.,	40	"
	" Aug. 1, 1883, " 23, " 1 S., " 4 E.,	40	"
	" Mar. 15, 1892, " 25, " 1 S., " 4 E.,	40	"
	" Jan. 21, 1891, " 25, " 1 S., " 4 E.,	40	"
	" Jan. 14, 1891, " 25, " 1 S., " 4 E.,	80	"
	" July 24, 1892, " 25, " 1 S., " 4 E.,	80	"
	" April 28, 1884, " 25, " 1 S., " 4 E.,	80	"
	" Aug. 31, 1891, " 25, " 1 S., " 4 E.,	80	"
	" Dec. 29, 1883, " 5, " 1 S., " 5 E.,	34	"
	" Nov. 12, 1883, " 5, " 1 S., " 5 E.,	34.22	"
	" April 18, 1882, " 5, " 1 S., " 5 E.,	40	"
	" Mar. 11, 1879, " 5, " 1 S., " 5 E.,	40	"
	" July 2, 1881, " 5, " 1 S., " 5 E.,	40	"
	" Mar. 18, 1890, " 5, " 1 S., " 5 E.,	40	"
	" Sept. 8, 1881, " 7, " 1 S., " 5 E.,	40	"
	" Aug. 29, 1881, " 7, " 1 S., " 5 E.,	40	"
	" Aug. 4, 1881, " 7, " 1 S., " 5 E.,	80	"
	" Nov. 20, 1880, " 7, " 1 S., " 5 E.,	78.54	"
	" Dec. 31, 1889, " 7, " 1 S., " 5 E.,	316.82	"
	" Aug. 4, 1881, " 7, " 1 S., " 5 E.,	80	"
	" Dec. 6, 1891, " 17, " 1 S., " 5 E.,	120	"
	" Dec. 6, 1890, " 17, " 1 S., " 5 E.,	120	"
	" Dec. 6, 1890, " 17, " 1 S., " 5 E.,	120	"
	" Dec. 6, 1890, " 17, " 1 S., " 5 E.,	160	"
	" Dec. 6, 1890, " 17, " 1 S., " 5 E.,	120	"
	" Nov. 10, 1890, " 19, " 1 S., " 5 E.,	80	"
	" May 5, 1891, " 19, " 1 S., " 5 E.,	80	"
	" Jan. 13, 1891, " 19, " 1 S., " 5 E.,	40	"
	" May 5, 1891, " 19, " 1 S., " 5 E.,	40	"
	" Dec. 13, 1876, " 19, " 1 S., " 5 E.,	119.23	"
	" Dec. 31, 1890, " 19, " 1 S., " 5 E.,	119.85	"
	" Feby. 20, 1884, " 19, " 1 S., " 5 E.,	40	"
	" May 30, 1883, " 19, " 1 S., " 5 E.,	40	"
	" Jan. 28, 1891, " 19, " 1 S., " 5 E.,	80	"
	" Oct. 11, 1884, " 21, " 1 S., " 5 E.,	160	"
	" Dec. 31, 1889, " 21, " 1 S., " 5 E.,	160	"
	" June 16, 1890, " 29, " 1 S., " 5 E.,	38	"
	" Nov. 17, 1886, " 29, " 1 S., " 5 E.,	2	"
	" Dec. 13, 1890, " 29, " 1 S., " 5 E.,	80	"
	" Mar. 31, 1891, " 29, " 1 S., " 5 E.,	40	"
	" Jan. 10, 1890, " 29, " 1 S., " 5 E.,	80	"
	" April 9, 1889, " 29, " 1 S., " 5 E.,	40	"
	" May 24, 1879, " 29, " 1 S., " 5 E.,	80	"
	" Jan. 15, 1890, " 29, " 1 S., " 5 E.,	80	"
	" Feby. 6, 1878, " 31, " 1 S., " 5 E.,	40	"
	" Nov. 7, 1882, " 31, " 1 S., " 5 E.,	439.95	"
	" Nov. 7, 1882, " 33, " 1 S., " 5 E.,	160	"
	" Nov. 19, 1883, " 33, " 1 S., " 5 E.,	80	"
	" Sept. 28, 1883, " 33, " 1 S., " 5 E.,	40	"
	" Sept. 17, 1883, " 33, " 1 S., " 5 E.,	40	"
	" Nov. 6, 1889, " 33, " 1 S., " 5 E.,	80	"
	" May 8, 1891, " 29, " 1 S., " 5 E.,	160	"
	" Dec. 16, 1872, " 3, " 2 S., " 1 E.,	16.79	"

EXHIBIT A. (To answer.)—Continued.

Sold Nov.	27, 1872, part of sec.	9, Tp. 2	N. 1 E.,	21.92 acres.
" Sept.	27, 1881,	" 1, "	" 2 E.,	20 "
" Oct.	20, 1877,	" 3, "	" 2 E.,	80 "
" Sept.	6, 1889,	" 3, "	" 2 E.,	40 "
" Jan'y.	19, 1878,	" 13, "	" 2 E.,	13.16 "
" Nov.	7, 1883,	" 23, "	" 2 E.,	40 "
" Oct.	21, 1878,	" 23, "	" 2 E.,	80 "
" May	10, 1879,	" 23, "	" 2 E.,	40 "
" April	1, 1889,	" 23, "	" 2 E.,	40 "
" Mar.	21, 1889,	" 35, "	" 2 E.,	40 "
" Sept.	15, 1884,	" 35, "	" 2 E.,	40 "
" Jan'y.	24, 1876,	" 35, "	" 2 E.,	120 "
" Mar.	15, 1889,	" 35, "	" 2 E.,	160 "
" Aug.	1, 1882,	" 1, "	" 3 E.,	80.50 "
" June	27, 1889,	" 1, "	" 3 E.,	120 "
" Dec.	5, 1879,	" 2, "	" 3 E.,	40 "
" Nov.	1, 1880,	" 1, "	" 3 E.,	80 "
" May	24, 1877,	" 1, "	" 3 E.,	80 "
" July	14, 1889,	" 1, "	" 3 E.,	40.62 "
" Nov.	27, 1889,	" 1, "	" 3 E.,	40.86 "
" Nov.	26, 1874,	" 9, "	" 3 E.,	8.32 "
" Sept.	1, 1890,	" 11, "	" 3 E.,	40 "
" Dec.	19, 1891,	" 11, "	" 3 E.,	40 "
" Dec.	16, 1881,	" 11, "	" 3 E.,	40 "
" Aug.	26, 1876,	" 11, "	" 3 E.,	80 "
" Mar.	16, 1882,	" 11, "	" 3 E.,	120 "
" July	31, 1874,	" 13, "	" 3 E.,	80 "
" Aug.	27, 1889,	" 13, "	" 3 E.,	40 "
" Dec.	16, 1872,	" 17, "	" 3 E.,	40 "
" Dec.	18, 1883,	" 17, "	" 3 E.,	40 "
" July	19, 1889,	" 21, "	" 3 E.,	47.60 "
" July	31, 1874,	" 25, "	" 3 E.,	31.98 "
" Jan'y.	23, 1879,	" 29, "	" 3 E.,	23.10 "
" Dec.	23, 1881,	" 31, "	" 3 E.,	88.94 "
" Dec.	23, 1881,	" 31, "	" 3 E.,	57.58 "
" Dec.	31, 1880,	" 31, "	" 2 E.,	41.22 "
" Oct.	30, 1877,	" 31, "	" 3 E.,	39.81 "
" June	3, 1875,	" 35, "	" 3 E.,	62.92 "
" June	3, 1875,	" 35, "	" 3 E.,	74.13 "
" Oct.	21, 1879,	" 35, "	" 3 E.,	11.24 "
" July	27, 1888,	" 1, "	" 4 E.,	79.73 "
" Nov.	12, 1888,	" 2, "	" 4 E.,	40 "
" Nov.	15, 1883,	" 1, "	" 4 E.,	40 "
" Sept.	16, 1878,	" 1, "	" 4 E.,	38.76 "
" July	17, 1883,	" 1, "	" 4 E.,	40 "
" Mar.	31, 1880,	" 1, "	" 4 E.,	80 "
" Mar.	14, 1883,	" 3, "	" 4 E.,	118.20 "
" Sept.	28, 1883,	" 7, "	" 4 E.,	40 "
" Nov.	23, 1883,	" 7, "	" 4 E.,	40 "
" May	7, 1890,	" 7, "	" 4 E.,	160 "
" Dec.	10, 1877,	" 9, "	" 4 E.,	40 "
" Dec.	10, 1877,	" 9, "	" 4 E.,	40 "
" Oct.	3, 1879,	" 9, "	" 4 E.,	40 "
" April	6, 1883,	" 9, "	" 4 E.,	40 "
" July	3, 1882,	" 9, "	" 4 E.,	40 "
" Aug.	12, 1882,	" 9, "	" 4 E.,	80 "
" Jan'y.	17, 1883,	" 9, "	" 4 E.,	160 "
" Jan'y.	27, 1879,	" 9, "	" 4 E.,	40 "
" May	8, 1888,	" 9, "	" 4 E.,	40 "
" July	30, 1888,	" 9, "	" 4 E.,	40 "
" July	16, 1888,	" 9, "	" 4 E.,	40 "
" Mar.	11, 1890,	" 9, "	" 4 E.,	40 "
" Oct.	10, 1874,	" 11, "	" 4 E.,	40 "
" July	29, 1875,	" 11, "	" 4 E.,	40 "
" Jan'y.	22, 1884,	" 11, "	" 4 E.,	80 "
" Mar.	12, 1883,	" 11, "	" 4 E.,	80 "
" May	16, 1883,	" 11, "	" 4 E.,	80 "
" Mar.	12, 1883,	" 11, "	" 4 E.,	40 "

EXHIBIT A. (To answer.)—Continued.

Sold	Oct. 19, 1880, part of	sec. 11, Tp. 2 S., R. 4 E.,	40	acres.
"	Mar. 24, 1879,	" 11, " 2 S., " 4 E.,	80	"
"	Jan. 26, 1883,	" 11, " 2 S., " 4 E.,	80	"
"	May 16, 1883,	" 11, " 2 S., " 4 E.,	40	"
"	Feby. 9, 1881,	" 11, " 2 S., " 4 E.,	40	"
"	July 19, 1881,	" 13, " 2 S., " 4 E.,	120	"
"	Aug. 17, 1876,	" 13, " 2 S., " 4 E.,	40	"
"	Nov. 4, 1873,	" 13, " 2 S., " 4 E.,	40	"
"	Dec. 16, 1872,	" 13, " 2 S., " 4 E.,	40	"
"	Sept. 13, 1877,	" 13, " 2 S., " 4 E.,	80	"
"	Sept. 28, 1883,	" 13, " 2 S., " 4 E.,	40	"
"	Dec. 15, 1874,	" 13, " 2 S., " 4 E.,	40	"
"	Oct. 3, 1876,	" 15, " 2 S., " 4 E.,	40	"
"	Sept. 23, 1889,	" 15, " 2 S., " 4 E.,	10	"
"	May 10, 1890,	" 15, " 2 S., " 4 E.,	240	"
"	Oct. 22, 1889,	" 19, " 2 S., " 4 E.,	40	"
"	June 2, 1884,	" 15, " 2 S., " 4 E.,	80	"
"	July 17, 1884,	" 15, " 2 S., " 4 E.,	80	"
"	Mar. 25, 1889,	" 15, " 2 S., " 4 E.,	80	"
"	Oct. 9, 1889,	" 15, " 2 S., " 4 E.,	10	"
"	May 26, 1884,	" 17, " 2 S., " 4 E.,	100	"
"	Mar. 20, 1873,	" 17, " 2 S., " 4 E.,	40	"
"	Nov. 27, 1872,	" 17, " 2 S., " 4 E.,	40	"
"	Jan. 19, 1878,	" 19, " 2 S., " 4 E.,	40	"
"	Nov. 27, 1872,	" 19, " 2 S., " 4 E.,	46.36	"
"	Dec. 20, 1871,	" 21, " 2 S., " 4 E.,	120	"
"	May 31, 1883,	" 21, " 2 S., " 4 E.,	40	"
"	Aug. 29, 1882,	" 23, " 2 S., " 4 E.,	80	"
"	May 5, 1890,	" 23, " 2 S., " 4 E.,	40	"
"	May 12, 1884,	" 23, " 2 S., " 4 E.,	80	"
"	Mar. 7, 1874,	" 23, " 2 S., " 4 E.,	10	"
"	July 28, 1882,	" 23, " 2 S., " 4 E.,	80	"
"	July 1, 1889,	" 23, " 2 S., " 4 E.,	40	"
"	Jan. 10, 1873,	" 25, " 2 S., " 4 E.,	40	"
"	Mar. 21, 1890,	" 25, " 2 S., " 4 E.,	40	"
"	June 30, 1891,	" 25, " 2 S., " 4 E.,	40	"
"	July 1, 1891,	" 25, " 2 S., " 4 E.,	10	"
"	May 13, 1890,	" 25, " 2 S., " 4 E.,	40	"
"	May 15, 1890,	" 25, " 2 S., " 4 E.,	40	"
"	Feby. 28, 1890,	" 25, " 2 S., " 4 E.,	80	"
"	Feby. 24, 1890,	" 25, " 2 S., " 4 E.,	80	"
"	Aug. 17, 1888,	" 27, " 2 S., " 4 E.,	160	"
"	May 8, 1890,	" 27, " 2 S., " 4 E.,	80	"
"	Aug. 30, 1890,	" 27, " 2 S., " 4 E.,	160	"
"	Aug. 1, 1883,	" 33, " 2 S., " 4 E.,	40	"
"	Feby. 8, 1883,	" 33, " 2 S., " 4 E.,	80	"
"	Nov. 26, 1881,	" 33, " 2 S., " 4 E.,	40	"
"	May 16, 1883,	" 35, " 2 S., " 4 E.,	80	"
"	Aug. 26, 1884,	" 1, " 2 S., " 5 E.,	160	"
"	Aug. 26, 1884,	" 1, " 2 S., " 5 E.,	158.11	"
"	Dec. 24, 1890,	" 3, " 2 S., " 5 E.,	635.36	"
"	Nov. 7, 1882,	" 5, " 2 S., " 5 E.,	320	"
"	Oct. 15, 1883,	" 5, " 2 S., " 5 E.,	160	"
"	Oct. 21, 1889,	" 5, " 2 S., " 5 E.,	40	"
"	April 29, 1891,	" 5, " 2 S., " 5 E.,	80	"
"	Nov. 16, 1891,	" 7, " 2 S., " 5 E.,	40	"
"	May 13, 1891,	" 7, " 2 S., " 5 E.,	162.33	"
"	Jan. 3, 1872,	" 9, " 2 S., " 5 E.,	40	"
"	Oct. 8, 1889,	" 9, " 2 S., " 5 E.,	200	"
"	Oct. 6, 1880,	" 9, " 2 S., " 5 E.,	80	"
"	Sept. 26, 1889,	" 11, " 2 S., " 5 E.,	160	"
"	June 9, 1890,	" 11, " 2 S., " 5 E.,	40	"
"	June 11, 1890,	" 11, " 2 S., " 5 E.,	40	"
"	Oct. 9, 1889,	" 11, " 2 S., " 5 E.,	120	"
"	May 19, 1890,	" 11, " 2 S., " 5 E.,	40	"
"	May 28, 1888,	" 11, " 2 S., " 5 E.,	40	"
"	Aug. 17, 1879,	" 11, " 2 S., " 5 E.,	40	"
"	Oct. 1, 1881,	" 11, " 2 S., " 5 E.,	80	"

EXHIBIT A. (To answer.)—Continued.

	Sold	April 14, 1884,	part	11. Tp. 2 S., R. 5 E.,	80	acres.
81	"	Feby. 14, 1883,	"	13, " 2 S., " 5 E.,	160	"
	"	Oct. 25, 1882,	"	13, " 2 S., " 5 E.,	240	"
	"	June 10, 1889,	"	15, " 2 S., " 5 E.,	40	"
	"	June 12, 1890,	"	15, " 2 S., " 5 E.,	80	"
	"	June 13, 1890,	"	15, " 2 S., " 5 E.,	80	"
	"	Mar. 6, 1891,	"	15, " 2 S., " 5 E.,	80	"
	"	Oct. 18, 1880,	"	17, " 2 S., " 5 E.,	80	"
	"	Sept. —, 1875,	"	17, " 2 S., " 5 E.,	80	"
	"	June 8, 1875,	"	17, " 2 S., " 5 E.,	40	"
	"	Nov. 8, 1889,	"	17, " 2 S., " 5 E.,	40	"
	"	Nov. 8, 1889,	"	17, " 2 S., " 5 E.,	40	"
	"	Mar. 27, 1874,	"	19, " 2 S., " 5 E.,	40	"
	"	Nov. 23, 1876,	"	19, " 2 S., " 5 E.,	40	"
	"	May 25, 1875,	"	19, " 2 S., " 5 E.,	40	"
	"	Mar. 12, 1890,	"	19, " 2 S., " 5 E.,	120	"
	"	Mar. 12, 1890,	"	19, " 2 S., " 5 E.,	197.10	"
	"	Oct. 2, 1889,	"	19, " 2 S., " 5 E.,	36.93	"
	"	Mar. 17, 1875,	"	19, " 2 S., " 5 E.,	36.76	"
	"	Feby. 16, 1876,	"	19, " 2 S., " 5 E.,	37.27	"
	"	Mar. 21, 1890,	"	21, " 2 S., " 5 E.,	80	"
	"	June 12, 1890,	"	21, " 2 S., " 5 E.,	80	"
	"	Sept. —, 1875,	"	21, " 2 S., " 5 E.,	160	"
	"	Mar. 31, 1883,	"	23, " 2 S., " 5 E.,	40	"
	"	Sept. 23, 1889,	"	23, " 2 S., " 5 E.,	40	"
	"	Nov. 2, 1885,	"	23, " 2 S., " 5 E.,	80	"
	"	Oct. 2, 1883,	"	23, " 2 S., " 5 E.,	40	"
	"	Jany. 4, 1884,	"	23, " 2 S., " 5 E.,	40	"
	"	Sept. 18, 1889,	"	23, " 2 S., " 5 E.,	200	"
	"	Sept. —, 1875,	"	23, " 2 S., " 5 E.,	80	"
	"	Nov. 23, 188—,	"	25, " 2 S., " 5 E.,	160	"
	"	Nov. 2, 1882,	"	25, " 2 S., " 5 E.,	160	"
	"	Nov. 21, 1884,	"	25, " 2 S., " 5 E.,	80	"
	"	Nov. 18, 1885,	"	25, " 2 S., " 5 E.,	80	"
	"	Sept. 14, 1889,	"	25, " 2 S., " 5 E.,	160	"
	"	Sept. 14, 1889,	"	27, " 2 S., " 5 E.,	80	"
	"	Mar. 7, 1883,	"	27, " 2 S., " 5 E.,	80	"
	"	Oct. 31, 1884,	"	27, " 2 S., " 5 E.,	80	"
	"	Dec. 6, 1882,	"	27, " 2 S., " 5 E.,	40	"
	"	June 17, 1891,	"	27, " 2 S., " 5 E.,	40	"
	"	July 28, 1890,	"	27, " 2 S., " 5 E.,	80	"
	"	June 1, 1891,	"	27, " 2 S., " 5 E.,	40	"
85	"	Mar. 22, 1889,	"	27, " 2 S., " 5 E.,	40	"
	"	July 26, 1889,	"	27, " 2 S., " 5 E.,	40	"
	"	June 2, 1890,	"	27, " 2 S., " 5 E.,	40	"
	"	Sept. —, 1875,	"	27, " 2 S., " 5 E.,	80	"
	"	June 9, 1880,	"	29, " 2 S., " 5 E.,	40	"
	"	Sept. 30, 1889,	"	29, " 2 S., " 5 E.,	40	"
	"	Jany. 30, 1874,	"	29, " 2 S., " 5 E.,	40	"
	"	June 8, 1888,	"	29, " 2 S., " 5 E.,	40	"
	"	Mar. 23, 1883,	"	29, " 2 S., " 5 E.,	40	"
	"	Mar. 23, 1883,	"	29, " 2 S., " 5 E.,	80	"
	"	Sept. 20, 1876,	"	29, " 2 S., " 5 E.,	40	"
	"	Jany. 5, 1875,	"	29, " 2 S., " 5 E.,	40	"
	"	Oct. 29, 1889,	"	29, " 2 S., " 5 E.,	40	"
	"	Oct. 29, 1889,	"	29, " 2 S., " 5 E.,	40	"
	"	May 15, 1889,	"	29, " 2 S., " 5 E.,	120	"
	"	Jany. 2, 1877,	"	31, " 2 S., " 5 E.,	40	"
	"	Oct. 8, 1888,	"	31, " 2 S., " 5 E.,	80	"
	"	Nov. 26, 1889,	"	31, " 2 S., " 5 E.,	113.11	"
	"	Dec. 4, 1888,	"	31, " 2 S., " 5 E.,	160	"
	"	Mar. 12, 1890,	"	31, " 2 S., " 5 E.,	233.71	"
	"	Nov. 11, 1889,	"	33, " 2 S., " 5 E.,	80	"
	"	Jany. 20, 1891,	"	33, " 2 S., " 5 E.,	80	"
	"	Jany. 20, 1891,	"	33, " 2 S., " 5 E.,	40	"
	"	Jany. 20, 1891,	"	33, " 2 S., " 5 E.,	80	"
	"	Sept. 22, 1888,	"	33, " 2 S., " 5 E.,	80	"
	"	Sept. 24, 1888,	"	33, " 2 S., " 5 E.,	40	"

EXHIBIT A. (To answer.)—Continued.

Sold	part	33, Tp. 2 S., R. 5 E.,	80	acres.
Sept. 22, 1888,				
" Feby. 13, 1891,	"	33, " 2 S., " 5 E.,	80	"
" Feby. 16, 1891,	"	33, " 2 S., " 5 E.,	80	"
" Aug. 19, 1889,	"	35, " 2 S., " 5 E.,	40	"
" Jan. 19, 1878,	"	15, " 3 S., " 1 E.,	74.16	"
" Nov. 27, 1872,	"	15, " 3 S., " 1 E.,	22.24	"
" Aug. 29, 1876,	"	25, " 3 S., " 1 E.,	30.25	"
" Sept. 24, 1877,	"	35, " 3 S., " 1 E.,	35.42	"
" Oct. 24, 1882,	"	1, " 3 S., " 2 E.,	80	"
" July 31, 1874,	"	1, " 3 S., " 2 E.,	78.52	"
" Aug. 7, 1882,	"	1, " 3 S., " 2 E.,	40	"
" Mar. 20, 1889,	"	1, " 3 S., " 2 E.,	40	"
" April 25, 1890,	"	11, " 3 W., " 2 E.,	40	"
" Aug. 3, 1878,	"	11, " 3 S., " 2 E.,	40	"
" May 18, 1885,	"	11, " 3 S., " 2 E.,	40	"
" June 13, 1885,	"	11, " 3 S., " 2 E.,	40	"
" Sept. 4, 1889,	"	11, " 3 S., " 2 E.,	90.08	"
" Apr. 23, 1885,	"	11, " 3 S., " 2 E.,	40	"
" Apr. 20, 1885,	"	11, " 3 S., " 2 E.,	37.99	"
" Apr. 8, 1885,	"	11, " 3 S., " 2 E.,	40	"
" May 14, 1874,	"	11, " 3 S., " 2 E.,	160	"
" Apr. 13, 1891,	"	11, " 3 S., " 2 E.,	40	"
" June 20, 1883,	"	13, " 3 S., " 2 E.,	80	"
" Feb. 19, 1875,	"	13, " 3 S., " 2 E.,	80	"
" Nov. 27, 1872,	"	13, " 3 S., " 2 E.,	160	"
" Jan. 13, 1879,	"	13, " 3 S., " 2 E.,	160	"
" June 4, 1877,	"	15, " 3 S., " 2 E.,	24.76	"
" May 21, 1883,	"	17, " 3 S., " 2 E.,	26.01	"
" Apr. 12, 1876,	"	17, " 3 S., " 2 E.,	30.91	"
" Mar. 18, 1876,	"	17, " 3 S., " 2 E.,	41	"
" June 14, 1883,	"	17, " 3 S., " 2 E.,	30.16	"
" July 9, 1890,	"	17, " 3 S., " 2 E.,	40	"
" Feb. 16, 1883,	"	25, " 3 S., " 2 E.,	120	"
" Apr. 17, 1883,	"	29, " 3 S., " 2 E.,	80	"
" Sept. 22, 1883,	"	29, " 3 S., " 2 E.,	160	"
" Nov. 27, 1872,	"	31, " 3 S., " 2 E.,	40	"
" Sept. 10, 1883,	"	31, " 3 S., " 2 E.,	40	"
" July 12, 1883,	"	31, " 3 S., " 2 E.,	80	"
" Sept. 28, 1883,	"	31, " 3 S., " 2 E.,	79.39	"
" Apr. 24, 1879,	"	31, " 3 S., " 2 E.,	78.63	"
" Feb. 23, 1885,	"	31, " 3 S., " 2 E.,	40	"
" Mar. 23, 1878,	"	31, " 3 S., " 2 E.,	40	"
" May 22, 1879,	"	1, " 3 S., " 3 E.,	39.22	"
" Dec. 31, 1890,	"	1, " 3 S., " 3 E.,	45.19	"
" Dec. 3, 1880,	"	1, " 3 S., " 3 E.,	81.10	"
" Dec. 15, 1881,	"	3, " 3 S., " 3 E.,	32.88	"
" Sept. 14, 1881,	"	5, " 3 S., " 3 E.,	38.58	"
" July 17, 1886,	"	5, " 3 S., " 3 E.,	38.53	"
" Aug. 26, 1881,	"	5, " 3 S., " 3 E.,	52.92	"
" July 31, 1874,	"	5, " 3 S., " 3 E.,	17.25	"
" Oct. 6, 1884,	"	7, " 3 S., " 3 E.,	54.14	"
" Mar. 20, 1892,	"	7, " 3 S., " 3 E.,	53.94	"
" Dec. 1, 1883,	"	7, " 3 S., " 3 E.,	122.65	"
" Apr. 25, 1890,	"	7, " 3 S., " 3 E.,	45.72	"
" May 7, 1890,	"	7, " 3 S., " 3 E.,	45.57	"
" Oct. 26, 1888,	"	9, " 3 S., " 3 E.,	14.86	"
" Oct. 26, 1888,	"	9, " 3 S., " 3 E.,	34.37	"
" June 17, 1878,	"	9, " 3 S., " 3 E.,	80	"
" July 31, 1874,	"	13, " 3 S., " 3 E.,	28.80	"
" July 31, 1874,	"	13, " 3 S., " 3 E.,	47.29	"
" Jan. 11, 1878,	"	13, " 3 S., " 3 E.,	40	"
" May 9, 1888,	"	13, " 3 S., " 3 E.,	39.30	"
" July 31, 1874,	"	17, " 3 S., " 3 E.,	78.36	"
" May 16, 1883,	"	19, " 3 S., " 3 E.,	80	"
" May 24, 1879,	"	23, " 3 S., " 3 E.,	4.50	"
" July 2, 1886,	"	25, " 3 S., " 3 E.,	46.95	"
" Oct. 19, 1875,	"	27, " 3 S., " 3 E.,	40	"
" July 27, 1880,	"	27, " 3 S., " 3 E.,	24	"

EXHIBIT A. (To answer.)—Continued.

Sold June 6, 1884,	part	29, Tp. 3 S., R. 3 E.,	115.31 acres.
" Mar. 8, 1883,	"	29, " 3 S., " 3 E.,	39.48 "
" Apr. 5, 1881,	"	29, " 3 S., " 3 E.,	40 "
" Mar. 5, 1880,	"	29, " 3 S., " 3 E.,	40 "
" Nov. 8, 1877,	"	29, " 3 S., " 3 E.,	40 "
" Jan. 13, 1879,	"	31, " 3 S., " 3 E.,	40 "
" Apr. 18, 1883,	"	31, " 3 S., " 3 E.,	40 "
" Apr. 18, 1878,	"	31, " 3 S., " 3 E.,	40 "
" Oct. 20, 1879,	"	31, " 3 S., " 3 E.,	40 "
" Feb. 20, 1879,	"	31, " 3 S., " 3 E.,	46.45 "
" Feb. 22, 1879,	"	31, " 3 S., " 3 E.,	46.34 "
" Sept. 21, 1889,	"	1, " 3 S., " 4 E.,	40.24 "
" Sept. 21, 1889,	"	1, " 3 S., " 4 E.,	40.69 "
" Nov. 2, 1881,	"	1, " 3 S., " 4 E.,	40 "
" Nov. 7, 1881,	"	1, " 3 S., " 4 E.,	40 "
" Jan. 30, 1890,	"	1, " 3 S., " 4 E.,	80 "
" July 31, 1874,	"	1, " 3 S., " 4 E.,	80 "
" July 31, 1874,	"	1, " 3 S., " 4 E.,	162.75 "
" Nov. 18, 1875,	"	3, " 3 S., " 4 E.,	80 "
" Dec. 10, 1877,	"	3, " 3 S., " 4 E.,	40 "
" May 10, 1882,	"	9, " 3 S., " 4 E.,	82.20 "
" July 31, 1874,	"	11, " 3 S., " 4 E.,	80 "
" April 1, 1884,	"	13, " 3 S., " 4 E.,	40 "
" Oct. 16, 1884,	"	13, " 3 S., " 4 E.,	40 "
" Nov. 15, 1883,	"	13, " 3 S., " 4 E.,	40 "
" Sept. 30, 1889,	"	13, " 3 S., " 4 E.,	40 "
" June 2, 1886,	"	13, " 3 S., " 4 E.,	40 "
" Feb. 11, 1890,	"	13, " 3 S., " 4 E.,	40 "
" May 17, 1881,	"	13, " 3 S., " 4 E.,	40 "
" Mar. 22, 1882,	"	13, " 3 S., " 4 E.,	40 "
" Mar. 22, 1882,	"	13, " 3 S., " 4 E.,	40 "
" Aug. 13, 1878,	"	13, " 3 S., " 4 E.,	40 "
" Jan. 19, 1878,	"	19, " 3 S., " 4 E.,	204.28 "
" Aug. 28, 1885,	"	19, " 3 S., " 4 E.,	177.13 "
" Dec. 17, 1883,	"	19, " 3 S., " 4 E.,	37.84 "
" June 4, 1883,	"	21, " 3 S., " 4 E.,	80 "
" Feb. 17, 1880,	"	21, " 3 S., " 4 E.,	87.40 "
" Nov. 10, 1882,	"	21, " 3 S., " 4 E.,	47.40 "
" Nov. 11, 1878,	"	21, " 3 S., " 4 E.,	54.51 "
" Nov. 3, 1888,	"	23, " 3 S., " 4 E.,	33.40 "
" Aug. 14, 1884,	"	23, " 3 S., " 4 E.,	33.40 "
" Apr. 12, 1883,	"	23, " 3 S., " 4 E.,	33.40 "
" Feb. 20, 1873,	"	23, " 3 S., " 4 E.,	63.30 "
" June 13, 1891,	"	25, " 3 S., " 4 E.,	80 "
" June 13, 1891,	"	25, " 3 S., " 4 E.,	80 "
" July 9, 1881,	"	25, " 3 S., " 4 E.,	40 "
" July 9, 1891,	"	25, " 3 S., " 4 E.,	40 "
" May 1, 1889,	"	27, " 3 S., " 4 E.,	40 "
" May 1, 1889,	"	27, " 3 S., " 4 E.,	40 "
" July 14, 1883,	"	27, " 3 S., " 4 E.,	120 "
" Sept. 24, 1878,	"	27, " 3 S., " 4 E.,	80 "
" Mar. 9, 1881,	"	27, " 3 S., " 4 E.,	40 "
" Mar. 7, 1889,	"	27, " 3 S., " 4 E.,	80 "
" Mar. 15, 1892,	"	29, " 3 S., " 4 E.,	76.72 "
" Mar. 14, 1879,	"	29, " 3 S., " 4 E.,	40 "
" Oct. 10, 1888,	"	31, " 3 S., " 4 E.,	20 "
" Nov. 27, 1872,	"	31, " 3 S., " 4 E.,	28.60 "
" Feby. 5, 1874,	"	31, " 3 S., " 4 E.,	28.60 "
" May 13, 1887,	"	31, " 3 S., " 4 E.,	61.33 "
" July 5, 1884,	"	31, " 3 S., " 4 E.,	36 "
" July 1, 1890,	"	31, " 3 S., " 4 E.,	44.88 "
" Oct. 16, 1875,	"	33, " 3 S., " 4 E.,	40 "
" June 17, 1889,	"	33, " 3 S., " 4 E.,	40 "
" July 30, 1889,	"	33, " 3 S., " 4 E.,	40 "
" Mar. 18, 1886,	"	33, " 3 S., " 4 E.,	32.50 "
" Oct. 5, 1885,	"	33, " 3 S., " 4 E.,	120 "
" Oct. 3, 1877,	"	35, " 3 S., " 4 E.,	80 "
" Feby. 2, 1889,	"	5, " 3 S., " 5 E.,	40 "

EXHIBIT A. (To answer.)—Continued.

89	Sold Feb'y. 2, 1889,	part	5, Tp. 3 S., R. 5 E.,	40	acres.
	" Feb'y. 4, 1889,	"	5, " 3 S., " 5 E.,	40	"
	" July 12, 1889,	"	5, " 3 S., " 5 E.,	40	"
	" April 15, 1884,	"	5, " 3 S., " 5 E.,	40	"
	" June 18, 1888,	"	5, " 3 S., " 5 E.,	40	"
	" July 1, 1884,	"	5, " 3 S., " 5 E.,	81.19	"
	" Aug. 7, 1884,	"	5, " 3 S., " 5 E.,	121.01	"
	" June 21, 1889,	"	5, " 3 S., " 5 E.,	201.48	"
	" July 6, 1877,	"	7, " 3 S., " 5 E.,	80	"
	" May 3, 1883,	"	7, " 3 S., " 5 E.,	40	"
	" Nov. 1, 1886,	"	7, " 3 S., " 5 E.,	40	"
	" Aug. 2, 1883,	"	7, " 3 S., " 5 E.,	40	"
	" Jan'y. 2, 1891,	"	7, " 3 S., " 5 E.,	39.94	"
	" June 17, 1885,	"	7, " 3 S., " 5 E.,	40.68	"
	" Sept. 25, 1888,	"	9, " 3 S., " 5 E.,	80	"
	" April 1, 1891,	"	9, " 3 S., " 5 E.,	80	"
	" May 13, 1891,	"	9, " 3 S., " 5 E.,	80	"
	" Jan'y. 20, 1890,	"	15, " 3 S., " 5 E.,	40	"
	" Mar. 8, 1890,	"	15, " 3 S., " 5 E.,	80	"
	" Dec. 14, 1889,	"	15, " 3 S., " 5 E.,	40	"
	" Oct. 31, 1879,	"	17, " 3 S., " 5 E.,	40	"
	" April 18, 1883,	"	17, " 3 S., " 5 E.,	40	"
	" April 18, 1883,	"	17, " 3 S., " 5 E.,	40	"
	" June 14, 1882,	"	17, " 3 S., " 5 E.,	80	"
	" Dec. 16, 1872,	"	17, " 3 S., " 5 E.,	120	"
	" Nov. 9, 1878,	"	17, " 3 S., " 5 E.,	40	"
	" Feb'y. 16, 1876,	"	17, " 3 S., " 5 E.,	80	"
	" Feb'y. 16, 1876,	"	17, " 3 S., " 5 E.,	80	"
	" May 8, 1883,	"	19, " 3 S., " 5 E.,	40	"
	" Nov. 23, 1876,	"	19, " 3 S., " 5 E.,	40	"
	" Feb'y. 6, 1877,	"	19, " 3 S., " 5 E.,	77.21	"
	" June 10, 1886,	"	19, " 3 S., " 5 E.,	78	"
	" Dec. 20, 1890,	"	19, " 3 S., " 5 E.,	40	"
	" Nov. 4, 1879,	"	19, " 3 S., " 5 E.,	40	"
	" Nov. 16, 1880,	"	19, " 3 S., " 5 E.,	40	"
	" Feb'y. 16, 1876,	"	19, " 3 S., " 5 E.,	2	"
	" Sept. 22, 1874,	"	19, " 3 S., " 5 E.,	77.31	"
	" Feb'y. 8, 1882,	"	21, " 3 S., " 5 E.,	80	"
	" May 29, 1883,	"	21, " 3 S., " 5 E.,	40	"
	" Oct. 24, 1882,	"	21, " 3 S., " 5 E.,	40	"
	" Nov. 27, 1888,	"	21, " 3 S., " 5 E.,	40	"
	" Dec. 30, 1889,	"	21, " 3 S., " 5 E.,	80	"
	" Mar. 3, 1890,	"	29, " 3 S., " 5 E.,	40	"
	" Nov. 21, 1882,	"	29, " 3 S., " 5 E.,	40	"
	" May 8, 1883,	"	29, " 3 S., " 5 E.,	40	"
	" Aug. 13, 1889,	"	29, " 3 S., " 5 E.,	40	"
	" Dec. 23, 1882,	"	29, " 3 S., " 5 E.,	40	"
	" Dec. 4, 1888,	"	29, " 3 S., " 5 E.,	80	"
	" Oct. 2, 1888,	"	31, " 3 S., " 5 E.,	80	"
	" Dec. 8, 1890,	"	31, " 3 S., " 5 E.,	40	"
	" Oct. 13, 1883,	"	31, " 3 S., " 5 E.,	80	"
	" April 24, 1885,	"	31, " 3 S., " 5 E.,	40	"
	" April 16, 1885,	"	31, " 3 S., " 5 E.,	40	"
	" Nov. 4, 1885,	"	31, " 3 S., " 5 E.,	39.39	"
	" Feb'y. 10, 1890,	"	31, " 3 S., " 5 E.,	40.33	"
	" Nov. 9, 1891,	"	31, " 3 S., " 5 E.,	40	"
	" Aug. 7, 1882,	"	31, " 3 S., " 5 E.,	40	"
	" June 27, 1891,	"	31, " 3 S., " 5 E.,	40	"
	" Dec. 8, 1890,	"	33, " 3 S., " 5 E.,	80	"
	" Nov. 9, 1878,	"	1, " 4 S., " 1 E.,	40	"
	" Dec. 6, 1876,	"	1, " 4 S., " 1 E.,	40	"
	" Dec. 24, 1889,	"	1, " 4 S., " 1 E.,	40	"
	" Dec. 24, 1889,	"	1, " 4 S., " 1 E.,	40	"
	" Oct. 17, 1887,	"	11, " 4 S., " 1 E.,	40	"
	" Nov. 23, 1889,	"	13, " 4 S., " 1 E.,	40	"
	" Nov. 23, 1889,	"	13, " 4 S., " 1 E.,	40	"
	" June 23, 1882,	"	23, " 4 S., " 1 E.,	40	"
	" Oct. 29, 1890,	"	23, " 4 S., " 1 E.,	40	"
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EXHIBIT A. (To answer.)—Continued.

Sold Aug. 24, 1882.	part	27. Tp. 4 S., R. 1 E.,	15.36 acres.
" Jan. 25, 1877.	"	1, " 4 S., " 2 E.,	80.10 "
" May 21, 1883.	"	1, " 4 S., " 2 E.,	40.14 "
" April 28, 1883.	"	1, " 4 S., " 2 E.,	40 "
" April 12, 1884.	"	1, " 4 S., " 2 E.,	40 "
" April 15, 1884.	"	1, " 4 S., " 2 E.,	40 "
" Feby. 15, 1884.	"	1, " 4 S., " 2 E.,	80 "
" April 13, 1884.	"	1, " 4 S., " 2 E.,	40 "
" July 16, 1888.	"	1, " 4 S., " 2 E.,	40 "
" May 3, 1879.	"	1, " 4 S., " 2 E.,	40 "
" Jan. 25, 1888.	"	1, " 4 S., " 2 E.,	40 "
" Nov. 9, 1891.	"	3, " 4 S., " 2 E.,	120 "
" June 29, 1885.	"	5, " 4 S., " 2 E.,	39.67 "
" July 16, 1885.	"	5, " 4 S., " 2 E.,	40 "
" April 29, 1889.	"	5, " 4 S., " 2 E.,	40 "
" Jan. 10, 1889.	"	5, " 4 S., " 2 E.,	40 "
" Nov. 25, 1889.	"	7, " 4 S., " 2 E.,	160 "
" Jan. 3, 1891.	"	11, " 4 S., " 2 E.,	40 "
" Aug. 7, 1890.	"	11, " 4 S., " 2 E.,	40 "
" Aug. 17, 1889.	"	11, " 4 S., " 2 E.,	40 "
" May 28, 1890.	"	11, " 4 S., " 2 E.,	160 "
" June 8, 1889.	"	11, " 4 S., " 2 E.,	40 "
" June 4, 1883.	"	11, " 4 S., " 2 E.,	40 "
" Mar. 27, 1888.	"	11, " 4 S., " 2 E.,	40 "
" April 29, 1889.	"	11, " 4 S., " 2 E.,	40 "
" April 25, 1884.	"	11, " 4 S., " 2 E.,	40 "
" Oct. 11, 1882.	"	11, " 4 S., " 2 E.,	40 "
" May 2, 1889.	"	11, " 4 S., " 2 E.,	80 "
" April 25, 1883.	"	13, " 4 S., " 2 E.,	80 "
" Sept. 15, 1883.	"	13, " 4 S., " 2 E.,	80 "
" May 1, 1882.	"	13, " 4 S., " 2 E.,	80 "
" Nov. 13, 1890.	"	13, " 4 S., " 2 E.,	40 "
" Oct. 24, 1877.	"	13, " 4 S., " 2 E.,	40 "
" Oct. 18, 1887.	"	15, " 4 S., " 2 E.,	40 "
" April 17, 1890.	"	15, " 4 S., " 2 E.,	40 "
" July 6, 1889.	"	15, " 4 S., " 2 E.,	40 "
" Dec. 9, 1889.	"	15, " 4 S., " 2 E.,	40 "
" May 14, 1889.	"	15, " 4 S., " 2 E.,	80 "
" Jan. 17, 1882.	"	15, " 4 S., " 2 E.,	40 "
" June 26, 1883.	"	15, " 4 S., " 2 E.,	40 "
" Feby. 6, 1888.	"	15, " 4 S., " 2 E.,	40 "
" Jan. 11, 1875.	"	19, " 4 S., " 2 E.,	37.56 "
" Oct. 27, 1879.	"	19, " 4 S., " 2 E.,	18 "
" Dec. 12, 1879.	"	21, " 4 S., " 2 E.,	160 "
" Dec. 9, 1882.	"	21, " 4 S., " 2 E.,	40 "
" May 23, 1888.	"	23, " 4 S., " 2 E.,	160 "
" June 27, 1888.	"	23, " 4 S., " 2 E.,	120 "
" May 19, 1890.	"	23, " 4 S., " 2 E.,	40 "
" Sept. 19, 1888.	"	23, " 4 S., " 2 E.,	80 "
" April 18, 1883.	"	23, " 4 S., " 2 E.,	80 "
" April 27, 1883.	"	23, " 4 S., " 2 E.,	80 "
" Sept. 22, 1888.	"	25, " 4 S., " 2 E.,	120 "
" Sept. 22, 1888.	"	25, " 4 S., " 2 E.,	120 "
" Sept. 22, 1888.	"	25, " 4 S., " 2 E.,	160 "
" Sept. 19, 1882.	"	35, " 4 S., " 2 E.,	13.63 "
" July 31, 1871.	"	1, " 4 S., " 3 E.,	80.17 "
" Nov. 27, 1872.	"	3, " 4 S., " 3 E.,	40.20 "
" Dec. 16, 1872.	"	3, " 4 S., " 3 E.,	40 "
" June 24, 1891.	"	3, " 4 S., " 3 E.,	40 "
" April 9, 1890.	"	3, " 4 S., " 3 E.,	40 "
" Dec. 16, 1879.	"	5, " 4 S., " 3 E.,	80 "
" Nov. 4, 1876.	"	5, " 4 S., " 3 E.,	80 "
" Feby. 10, 1880.	"	7, " 4 S., " 3 E.,	80 "
" Mar. 11, 1889.	"	7, " 4 S., " 3 E.,	207.211 "
" April 21, 1888.	"	7, " 4 S., " 3 E.,	46.98 "
" Dec. 16, 1872.	"	7, " 4 S., " 3 E.,	8.18 "
" Aug. 17, 1876.	"	9, " 4 S., " 3 E.,	80 "
" Feby. 19, 1875.	"	9, " 4 S., " 3 E.,	40 "

EXHIBIT A. (To answer.)—Continued.

Sold	Feb'y. 18, 1889,	part	11, Tp. 4 S., R 3 E.,	43.37 acres.
"	Oct. 21, 1889,	"	11, " 4 S., " 3 E.,	24.97 "
"	Aug. 1875,	"	13, " 4 S., " 3 E.,	40 "
"	July 10, 1879,	"	13, " 4 S., " 3 E.,	40 "
"	Sept. 26, 1883,	"	13, " 4 S., " 3 E.,	80 "
"	Mar. 22, 1886,	"	13, " 4 S., " 3 E.,	80 "
"	Dec. 11, 1885,	"	13, " 4 S., " 3 E.,	160 "
"	Dec. 5, 1888,	"	13, " 4 S., " 3 E.,	40 "
"	Jany. 29, 1889,	"	17, " 4 S., " 3 E.,	80 "
"	May 1, 1890,	"	19, " 4 S., " 3 E.,	47.33 "
"	Nov. 26, 1889,	"	21, " 4 S., " 3 E.,	120 "
"	Dec. 14, 1888,	"	21, " 4 S., " 3 E.,	160 "
"	Dec. 14, 1888,	"	21, " 4 S., " 3 E.,	80 "
"	Mar. 5, 1890,	"	21, " 4 S., " 3 E.,	80 "
"	Dec. 15, 1882,	"	21, " 4 S., " 3 E.,	40 "
"	Oct. 1, 1885,	"	23, " 4 S., " 3 E.,	160 "
"	July 1, 1890,	"	23, " 4 S., " 3 E.,	40 "
"	Aug. 16, 1886,	"	23, " 4 S., " 3 E.,	40 "
"	Oct. 27, 1885,	"	23, " 4 S., " 3 E.,	120 "
"	Mar. 27, 1877,	"	23, " 4 S., " 3 E.,	40 "
"	May 25, 1878,	"	23, " 4 S., " 3 E.,	40 "
"	April 23, 1889,	"	23, " 4 S., " 3 E.,	40 "
"	April 23, 1889,	"	23, " 4 S., " 3 E.,	40 "
"	Dec. 19, 1888,	"	25, " 4 S., " 3 E.,	40 "
"	Dec. 19, 1889,	"	25, " 4 S., " 3 E.,	40 "
"	May 31, 1889,	"	25, " 4 S., " 3 E.,	40 "
"	June 30, 1883,	"	25, " 4 S., " 3 E.,	40 "
"	April 14, 1891,	"	25, " 4 S., " 3 E.,	40 "
"	July 30, 1877,	"	25, " 4 S., " 3 E.,	40 "
"	June 2, 1890,	"	25, " 4 S., " 3 E.,	160 "
"	Aug. 27, 1889,	"	27, " 4 S., " 3 E.,	40 "
"	June 19, 1890,	"	27, " 4 S., " 3 E.,	40 "
"	Sept. 25, 1885,	"	27, " 4 S., " 3 E.,	120 "
"	Aug. 13, 1889,	"	27, " 4 S., " 3 E.,	40 "
"	Aug. 13, 1889,	"	27, " 4 S., " 3 E.,	40 "
"	Aug. 21, 1889,	"	27, " 4 S., " 3 E.,	80 "
"	Dec. 4, 1875,	"	27, " 4 S., " 3 E.,	40 "
"	May 1, 1884,	"	29, " 4 S., " 3 E.,	160 "
"	Dec. 2, 1890,	"	31, " 4 S., " 3 E.,	80 "
"	Aug. 6, 1890,	"	31, " 4 S., " 3 E.,	80 "
"	June 12, 1890,	"	33, " 4 S., " 3 E.,	80 "
"	Oct. 14, 1890,	"	33, " 4 S., " 3 E.,	80 "
"	July 7, 1888,	"	33, " 4 S., " 3 E.,	80 "
"	July 29, 1890,	"	33, " 4 S., " 3 E.,	40 "
"	Jany. 19, 1878,	"	35, " 4 S., " 3 E.,	80 "
"	Dec. 28, 1877,	"	35, " 4 S., " 3 E.,	400 "
"	Sept. 3, 1890,	"	1, " 4 S., " 4 E.,	40.03 "
"	Nov. 8, 1872,	"	1, " 4 S., " 4 E.,	80.08 "
"	April 12, 1878,	"	1, " 4 S., " 4 E.,	40 "
"	April 10, 1891,	"	1, " 4 S., " 4 E.,	80 "
"	April 10, 1891,	"	1, " 4 S., " 4 E.,	80 "
"	July 23, 1883,	"	1, " 4 S., " 4 E.,	80 "
"	April 26, 1889,	"	3, " 4 S., " 4 E.,	42.26 "
"	Dec. 3, 1875,	"	3, " 4 S., " 4 E.,	82 "
"	Dec. 12, 1878,	"	3, " 4 S., " 4 E.,	38.17 "
"	June 3, 1882,	"	3, " 4 S., " 4 E.,	37.74 "
"	Aug. 30, 1877,	"	7, " 4 S., " 4 E.,	38.21 "
"	Dec. 27, 1882,	"	7, " 4 S., " 4 E.,	76.16 "
"	Nov. 3, 1882,	"	9, " 4 S., " 4 E.,	29.59 "
"	May 7, 1875,	"	9, " 4 S., " 4 E.,	39.67 "
"	Aug. 25, 1890,	"	9, " 4 S., " 4 E.,	59.02 "
"	Sept. 13, 1890,	"	11, " 4 S., " 4 E.,	40 "
"	April 6, 1891,	"	11, " 4 S., " 4 E.,	80 "
"	April 6, 1891,	"	11, " 4 S., " 4 E.,	80 "
"	Dec. 22, 1890,	"	11, " 4 S., " 4 E.,	80 "
"	Sept. 1875,	"	11, " 4 S., " 4 E.,	19.97 "
"	Dec. 18, 1890,	"	11, " 4 S., " 4 E.,	69.90 "
"	Oct. 6, 1890,	"	11, " 4 S., " 4 E.,	40 "

EXHIBIT A. (To answer.)—Continued.

Sold	July 16, 1890,	part	11. Tp. 4 S., R. 4 E.,	40	acres.
"	April 15, 1891,	"	13, " 4 S., " 4 E.,	80	"
"	Aug. 24, 1891,	"	13, " 4 S., " 4 E.,	80	"
"	Aug. 24, 1891,	"	13, " 4 S., " 4 E.,	160	"
"	July 19, 1886,	"	15, " 4 S., " 4 E.,	80	"
"	Oct. 29, 1890,	"	15, " 4 S., " 4 E.,	80	"
"	Oct. 28, 1874,	"	15, " 4 S., " 4 E.,	80	"
"	Nov. 20, 1890,	"	15, " 4 S., " 4 E.,	80	"
"	Aug. 6, 1890,	"	15, " 4 S., " 4 E.,	72.50	"
"	Aug. 6, 1890,	"	15, " 4 S., " 4 E.,	18	"
"	April 8, 1885,	"	15, " 4 S., " 4 E.,	44.76	"
"	Feby. 1, 1881,	"	15, " 4 S., " 4 E.,	2	"
"	Feby. 27, 1890,	"	17, " 4 S., " 4 E.,	131.13	"
"	Oct. 23, 1889,	"	17, " 4 S., " 4 E.,	40	"
"	July 8, 1884,	"	17, " 4 S., " 4 E.,	40	"
"	May 14, 1885,	"	19, " 4 S., " 4 E.,	118.70	"
"	Dec. 16, 1872,	"	19, " 4 S., " 4 E.,	40	"
"	Nov. 27, 1872,	"	19, " 4 S., " 4 E.,	160	"
"	April 24, 1886,	"	19, " 4 S., " 4 E.,	78.90	"
"	Nov. 18, 1873,	"	19, " 4 S., " 4 E.,	79.10	"
"	Sept. 29, 1886,	"	21, " 4 S., " 4 E.,	80	"
"	Jany. 13, 1890,	"	21, " 4 S., " 4 E.,	80	"
"	April 17, 1885,	"	21, " 4 S., " 4 E.,	80	"
"	June 2, 1874,	"	21, " 4 S., " 4 E.,	80	"
"	Feby. 16, 1883,	"	21, " 4 S., " 4 E.,	80	"
"	Dec. 22, 1890,	"	23, " 4 S., " 4 E.,	80	"
"	Feby. 14, 1890,	"	23, " 4 S., " 4 E.,	40	"
"	Sept. 22, 1890,	"	23, " 4 S., " 4 E.,	40	"
"	Oct. 15, 1891,	"	23, " 4 S., " 4 E.,	40	"
"	Jany. 7, 1885,	"	23, " 4 S., " 4 E.,	40	"
"	Aug. 23, 1890,	"	23, " 4 S., " 4 E.,	40	"
"	June 2, 1885,	"	23, " 4 S., " 4 E.,	40	"
"	Oct. 18, 1890,	"	23, " 4 S., " 4 E.,	40	"
"	Dec. 26, 1891,	"	23, " 4 S., " 4 E.,	80	"
"	June 11, 1890,	"	29, " 4 S., " 4 E.,	40	"
"	Jany. 24, 1890,	"	29, " 4 S., " 4 E.,	40	"
"	June 11, 1890,	"	29, " 4 S., " 4 E.,	80	"
"	April 19, 1883,	"	29, " 4 S., " 4 E.,	40	"
"	April 29, 1889,	"	29, " 4 S., " 4 E.,	40	"
"	April 29, 1889,	"	29, " 4 S., " 4 E.,	40	"
"	Nov. 27, 1872,	"	29, " 4 S., " 4 E.,	80	"
"	Dec. 22, 1871,	"	29, " 4 S., " 4 E.,	80	"
"	Jany. 3, 1891,	"	31, " 4 S., " 4 E.,	40	"
"	Oct. 10, 1890,	"	31, " 4 S., " 4 E.,	40	"
"	Jany. 8, 1889,	"	31, " 4 S., " 4 E.,	80	"
"	Jany. 29, 1883,	"	31, " 4 S., " 4 E.,	121.48	"
"	Oct. 27, 1890,	"	31, " 4 S., " 4 E.,	40	"
"	May 2, 1882,	"	31, " 4 S., " 4 E.,	81.91	"
"	Oct. 10, 1891,	"	33, " 4 S., " 4 E.,	40	"
"	July 30, 1891,	"	3, " 1 S., " 5 E.,	158.62	"
"	April 4, 1891,	"	3, " 4 S., " 5 E.,	80	"
"	Feby. 2, 1891,	"	5, " 4 S., " 5 E.,	80.84	"
"	April 11, 1891,	"	5, " 4 S., " 5 E.,	80.99	"
"	Jany. 24, 1891,	"	5, " 4 S., " 5 E.,	81.13	"
"	Oct. 9, 1891,	"	5, " 4 S., " 5 E.,	40	"
"	Oct. 9, 1891,	"	5, " 4 S., " 5 E.,	40	"
"	Mar. 22, 1892,	"	11, " 4 S., " 5 E.,	80	"
"	Aug. 8, 1881,	"	1, " 5 S., " 1 E.,	161.12	"
"	Feby. 16, 1876,	"	13, " 5 S., " 1 E.,	160	"
"	June 21, 1882,	"	1, " 5 S., " 2 E.,	86.77	"
"	Jany. 16, 1890,	"	3, " 5 S., " 2 E.,	103.21	"
"	Feby. 10, 1876,	"	7, " 5 S., " 2 E.,	57.39	"
"	Sept. 6, 1886,	"	13, " 5 S., " 2 E.,	40	"
"	Dec. 9, 1899,	"	13, " 5 S., " 2 E.,	71.85	"
"	Aug. 18, 1886,	"	13, " 5 S., " 2 E.,	98.20	"
"	Oct. 8, 1875,	"	19, " 5 S., " 2 E.,	78.36	"
"	Oct. 4, 1889,	"	25, " 5 S., " 2 E.,	118.60	"
"	Dec. 9, 1891,	"	35, " 5 S., " 2 E.,	80	"
"	July 10, 1880,	"	1, " 5 S., " 3 E.,	40	"

EXHIBIT A. (To answer.)—Continued.

	Sold Dec. 3, 1886,	part	1, Tp. 5 S., R. 3 E.,	80	acres.
	" Sept. 22, 1887,	"	1, " 5 S., " 3 E.,	40	"
	" Oct. 18, 1887,	"	1, " 5 S., " 3 E.,	40	"
	" Sept. 21, 1891,	"	1, " 5 S., " 3 E.,	40	"
	" Sept. 21, 1891,	"	1, " 5 S., " 3 E.,	40	"
	" Sept. 25, 1891,	"	1, " 5 S., " 3 E.,	40	"
	" Nov. 14, 1876,	"	3, " 5 S., " 3 E.,	352, 16	"
	" Dec. 28, 1877,	"	3, " 5 S., " 3 E.,	157, 10	"
	" Dec. 8, 1879,	"	3, " 5 S., " 3 E.,	120	"
	" Aug. 27, 1877,	"	5, " 5 S., " 3 E.,	79, 23	"
	" Jan. 19, 1878,	"	5, " 5 S., " 3 E.,	80, 12	"
	" Dec. 15, 1884,	"	5, " 5 S., " 3 E.,	40	"
	" Mar. 3, 1886,	"	5, " 5 S., " 3 E.,	40	"
	" April 16, 1886,	"	7, " 5 S., " 3 E.,	40	"
	" Oct. 10, 1876,	"	9, " 5 S., " 3 E.,	40	"
	" May 2, 1877,	"	9, " 5 S., " 3 E.,	280	"
	" Dec. 26, 1878,	"	9, " 5 S., " 3 E.,	320	"
	" July 1, 1889,	"	11, " 5 S., " 3 E.,	40	"
	" Feby. 10, 1890,	"	11, " 5 S., " 3 E.,	80	"
	" Jan. 19, 1878,	"	11, " 5 S., " 3 E.,	80	"
96	Sale May 15, 1888,	"	13, " 5 S., " 3 E.,	40	"
	" April 3, 1888,	"	13, " 5 S., " 3 E.,	46	"
	" July 8, 1899,	"	13, " 5 S., " 3 E.,	10	"
	" Oct. 18, 1876,	"	15, " 5 S., " 3 E.,	400	"
	" May 2, 1877,	"	15, " 5 S., " 3 E.,	240	"
	" Dec. 1, 1883,	"	17, " 5 S., " 3 E.,	160	"
	" Dec. 1, 1883,	"	17, " 5 S., " 3 E.,	280	"
	" Dec. 1, 1883,	"	17, " 5 S., " 3 E.,	40	"
	" June 22, 1887,	"	17, " 5 S., " 3 E.,	40	"
	" Sept. 15, 1879,	"	17, " 5 S., " 3 E.,	10	"
	" Aug. 10, 1882,	"	19, " 5 S., " 3 E.,	40, 27	"
	" Nov. 1, 1882,	"	19, " 5 S., " 3 D.,	112, 60	"
	" June 7, 1886,	"	19, " 5 S., " 3 E.,	104, 08	"
	" Dec. 26, 1878,	"	21, " 5 S., " 3 E.,	320	"
	" Nov. 24, 1886,	"	21, " 5 S., " 3 E.,	40	"
	" Feby. 4, 1889,	"	21, " 5 S., " 3 E.,	80	"
	" Jan. 17, 1891,	"	23, " 5 S., " 3 E.,	10	"
	" Sept. 28, 1891,	"	23, " 5 S., " 3 E.,	10	"
	" Mar. 11, 1892,	"	23, " 5 S., " 3 E.,	80	"
	" May 11, 1885,	"	29, " 5 S., " 3 E.,	40	"
	" Nov. 22, 1886,	"	29, " 5 S., " 3 E.,	80	"
	" Nov. 22, 1886,	"	29, " 5 S., " 3 E.,	120	"
	" June 20, 1887,	"	29, " 5 S., " 3 E.,	40	"
	" June 21, 1887,	"	29, " 5 S., " 3 E.,	40	"
	" July 30, 1889,	"	29, " 5 S., " 3 E.,	40	"
	" Nov. 22, 1888,	"	29, " 5 S., " 3 E.,	80	"
	" Feby. 12, 1889,	"	29, " 5 S., " 3 E.,	40	"
	" June 9, 1886,	"	31, " 5 S., " 3 E.,	80	"
	" Oct. 28, 1887,	"	31, " 5 S., " 3 E.,	53, 32	"
	Sold Oct. 28, 1891,	"	31, " 5 S., " 3 E.,	40	"
	" Oct. 28, 1891,	"	31, " 5 S., " 3 E.,	10	"
	" Oct. 17, 1882,	"	1, " 6 S., " 1 E.,	79, 52	"
	" Nov. 23, 1889,	"	1, " 6 S., " 1 E.,	40	"
	" Feby. 9, 1880,	"	11, " 6 S., " 1 E.,	61, 91	"
	" Aug. 17, 1877,	"	13, " 6 S., " 1 E.,	10	"
	" Feby. 3, 1892,	"	13, " 6 S., " 1 E.,	40	"
	" April 23, 1871,	"	23, " 6 S., " 1 E.,	39, 10	"
	" July 2, 1875,	"	23, " 6 S., " 1 E.,	40	"
	" April 25, 1876,	"	23, " 6 S., " 1 E.,	39, 40	"
	" April 29, 1880,	"	23, " 6 S., " 1 E.,	40	"
	" Sept. 21, 1881,	"	1, " 6 S., " 2 E.,	80	"
	" May 3, 1885,	"	1, " 6 S., " 2 E.,	40	"
	" Jan. 9, 1878,	"	3, " 6 S., " 2 E.,	80	"
	" Dec. 22, 1880,	"	3, " 6 S., " 2 E.,	161, 76	"
	" June 2, 1882,	"	3, " 6 S., " 2 E.,	80	"
	" Sept. 20, 1882,	"	3, " 6 S., " 2 E.,	40	"
	" Dec. 12, 1882,	"	3, " 6 S., " 2 E.,	40	"
	" April 26, 1875,	"	5, " 6 S., " 2 E.,	80	"
	" Jan. 24, 1883,	"	5, " 6 S., " 2 E.,	80	"

EXHIBIT A. (To answer.)—Continued.

Sold Nov. 10, 1891,	part	5, Tp. 6 S., R. 2 E.,	41. 15 acres.
" July 1, 1882,	"	9, " 6 S., " 2 E.,	40 "
" April 28, 1882,	"	9, " 6 S., " 2 E.,	80 "
" May 11, 1877,	"	11, " 6 S., " 2 E.,	80 "
" Nov. 12, 1878,	"	11, " 6 S., " 2 E.,	120 "
" June 17, 1885,	"	11, " 6 S., " 2 E.,	40 "
" July 9, 1875,	"	13, " 6 S., " 2 E.,	120 "
" Nov. 3, 1875,	"	13, " 6 S., " 2 E.,	80 "
" June 11, 1878,	"	13, " 6 S., " 2 E.,	80 "
" Nov. 4, 1878,	"	15, " 6 S., " 2 E.,	80 "
" Oct. 16, 1882,	"	15, " 6 S., " 2 E.,	120 "
" July 1, 1882,	"	17, " 6 S., " 2 E.,	40 "
" Nov. 21, 1874,	"	17, " 6 S., " 2 E.,	120 "
" May 31, 1888,	"	17, " 6 S., " 2 E.,	80 "
" Dec. 17, 1889,	"	17, " 6 S., " 2 E.,	40 "
" Dec. 17, 1889,	"	17, " 6 S., " 2 E.,	40 "
" Jan. 31, 1890,	"	17, " 6 S., " 2 E.,	40 "
" April 5, 1876,	"	19, " 6 S., " 2 E.,	74. 72 "
" Mar. 8, 1883,	"	19, " 6 S., " 2 E.,	40 "
" Aug. 23, 1883,	"	19, " 6 S., " 2 E.,	40 "
" Dec. 19, 1890,	"	19, " 6 S., " 2 E.,	80 "
" Oct. 28, 1874,	"	21, " 6 S., " 2 E.,	160 "
" May 18, 1883,	"	21, " 6 S., " 2 E.,	320 "
" May 15, 1883,	"	21, " 6 S., " 2 E.,	80 "
" May 24, 1879,	"	23, " 6 S., " 2 E.,	80 "
" July 31, 1877,	"	23, " 6 S., " 2 E.,	160 "
" May 16, 1883,	"	23, " 6 S., " 2 E.,	80 "
" May 18, 1883,	"	23, " 6 S., " 2 E.,	240 "
" Jan. 10, 1876,	"	25, " 6 S., " 2 E.,	120 "
" Oct. 9, 1884,	"	25, " 6 S., " 2 E.,	40 "
" May 1, 1889,	"	25, " 6 S., " 2 E.,	80 "
" May 31, 1882,	"	27, " 6 S., " 2 E.,	40 "
" May 7, 1883,	"	27, " 6 S., " 2 E.,	120 "
" May 7, 1883,	"	27, " 6 S., " 2 E.,	320 "

Total acres sold, 61,536.23 A.

98 STATE OF OREGON, *County of Multnomah, ss:*

Due service of the within answer is hereby accepted, in said county, Oregon, this 25th day of June, 1894, by receiving a copy thereof, duly certified to as such by W. D. Fenton, of solicitors for defendants.

DANIEL R. MURPHY,

U. S. District Attorney, and Solicitor for Complainant.

(Endorsed :) Filed June 25, 1894. J. A. Shaden, clerk.

And afterwards, to wit, on Monday, the 2d day of July, 1894, the same being the 73d judicial day of the regular April term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

In the circuit court of the United States for the district of Oregon,
July 2, 1894.

THE UNITED STATES

*vs.*THE OREGON AND CALIFORNIA RAILROAD
Company et al.

No. 1982.

Order extending time to file replication.

Now, at this day, on motion of Mr. John M. Gearin, of counsel
99 for the plaintiff, it is ordered that the plaintiff herein be, and it

is hereby, allowed ten days from this date in which to plead to the answer herein.

And afterwards, to wit, on Friday, the 13th day of July, 1894, the same being the 83d judicial day of the regular April term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

In the circuit court of the United States for the district of Oregon,
July 13, 1894.

THE UNITED STATES	}	No. 1982.
<i>vs.</i>		
OREGON & CALIFORNIA RAILROAD Company et al.		

Order extending time to file replication.

Now, at this day, on motion of Mr. Daniel R. Murphy, United States attorney, it is ordered that the time for filing the replication herein be, and the same is hereby, extended five days from this date.

And afterwards, to wit, on the 14th day of July, 1894, there was duly filed in said court a replication, in words and figures as follows, to wit:

100 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES OF AMERICA, COMPLAINANT,	}	In equity.
<i>vs.</i>		
THE OREGON AND CALIFORNIA RAILROAD COMPANY, John A. Hurlburt, and Thos. L. Evans, defendants.		

Replication to answer.

This repliant, the United States of America, saving and reserving to itself all and all manner of advantage of exception which may be had or taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants for a replication thereunto, saith that it doth and will aver, maintain, and prove its said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this repliant is ready to

101 aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

DANIEL R. MURPHY,

U. S. Attorney and Solicitor for Complainant.

Due service of the within reply by certified copy, as provided by law, is hereby admitted at Portland, Or., July, 1894.

(Endorsed:) Filed July 14, 1894. J. A. Sladen, clerk.

And afterwards, to wit, on the 26th day of July, 1894, there was duly filed in said court a notice, in words and figures as follows, to wit:

In the circuit court of the United States for the district of Oregon.

THE UNITED STATES, COMPLAINANT,

vs.

THE OREGON & CALIFORNIA RAILROAD COMPANY,
John A. Hurlburt, and Thomas L. Evans, defendants.

Notice to take evidence orally.

To the above-named complainant, and to Daniel R. Murphy, U. S. district attorney, and to John M. Geurin, solicitor for complainant:

102 You and each of you will take notice that the defendants above named desire the evidence to be adduced in the above-entitled cause to be taken orally.

Dated July 24th, 1894.

E. C. BRONAUGH,
L. L. MCARTHUR,
W. D. FENTON,
E. C. BRONAUGH, Jr.,
Solicitors for Defendants.

STATE OF OREGON,

County of Multnomah, ss:

Due service of the within notice is hereby accepted in said county, Oregon, this 24th day of July, 1894, by receiving a copy thereof, duly certified to as such by W. D. Fenton, of solicitors for defendants.

D. R. MURPHY,
Solicitor for Complainant.

(Endorsed:) Filed July 26, 1894. J. A. Sladen, clerk.

And afterwards, to wit, on Friday, the 27th day of July, 1894, the same being the 95th judicial day of the regular April term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

103 In the circuit court of the United States for the district of Oregon. July 27, 1894.

THE UNITED STATES

vs.

THE OREGON AND CALIFORNIA RAILROAD
Company et al.

No. 1982.

Order fixing time for the taking of testimony.

Now, at this day, upon motion of Mr. W. D. Fenton, of counsel for the defendants, the plaintiff being present by its counsel, Mr. Daniel R. Murphy, United States attorney, and agreeing thereto, it is ordered that

the plaintiff be, and it is hereby, allowed 30 days from this date in which to take its evidence herein; that after notice from the plaintiff that its evidence in chief is taken, the defendants be, and they are hereby, allowed 60 days in which to take their testimony herein, and that, after notice shall have been given to said plaintiff that the said evidence is taken by said defendants, the plaintiff be, and it is hereby, allowed 30 days further time in which to take its testimony in rebuttal; and it is further ordered that said evidence be taken orally, and that either party is authorized to apply to the court for further time or for modification of this order upon sufficient cause being shown therefor.

And afterwards, to wit, on Monday, the 24th day of September, 1894, the same being the 145th judicial day of the regular

April term of said court—present, the Honorable Charles B. Bellinger, United States district judge, presiding—the following proceedings were had in said case, to wit:

In the circuit court of the United States for the district of Oregon.
September 24, 1893.

THE UNITED STATES	}	No. 1982.
<i>vs.</i>		
THE OREGON AND CALIFORNIA RAILROAD Company et al.		

Order appointing special examiner.

Now, at this day, comes the plaintiff, by Mr. John M. Gearin, special counsel, and the defendants by Mr. W. D. Fenton, of counsel, and thereupon said defendants move the court for an order appointing some qualified person at the city of Portland, Oregon, to act as special examiner of this court, to take orally such depositions and testimony as the parties hereto desire to be taken at said city of Portland. It is therefore ordered that Mr. F. S. Lafferty, of Portland, Oregon, be, and he is hereby, appointed a special examiner of this court, with power and authority to take and transmit to this court such depositions and testimony in this cause as the parties hereto desire to be taken at said city of Portland, and at such time as may suit the convenience of said examiner and of the parties hereto; and that said examiner extend said testimony

105 when so taken and report the same to this court with all convenient speed. Said testimony, when so taken, to be used upon the trial of this cause.

(Signed)

CHARLES B. BELLINGER, *Judge.*

(Endorsed:) Filed September 24, 1894. J. A. Sladen, clerk.

And afterwards, to wit, on Thursday, the 27th day of September, 1894, the same being the 148th judicial day of the regular April term of said court—present, the Honorable Charles B. Bellinger, United

States district judge, presiding—the following proceedings were had in said case, to wit:

In the circuit court of the United States for the district of Oregon.
September 27, 1894.

THE UNITED STATES	}	No. 1982.
<i>vs.</i>		
THE OREGON AND CALIFORNIA RAILROAD Company et al.		

Order extending plaintiff's time to take testimony.

Now, at this day, on motion of Mr. Daniel R. Murphy, United States attorney, it is ordered that the time heretofore allowed for the taking of testimony in this cause by the plaintiff be, and the same is hereby, extended until thirty days from this date.

And afterwards, to wit, on Monday, the 9th of September, 1895, the same being the 132d judicial day of the regular April term of said court—present, the Honorable William B. Gilbert, United States circuit judge, presiding—the following proceedings were had in said case, to wit:

In the circuit court of the United States for the district of Oregon.

THE UNITED STATES OF AMERICA, COMPLAINANT,	}
<i>vs.</i>	
THE OREGON & CALIFORNIA RAILROAD COMPANY, John A. Hurlburt, and Thomas L. Evans, defendant.	

Final decree.

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows:

I.

That the several patents described in the bill herein issued by the United States to defendant, The Oregon and California Railroad Company, on May 9th, 1871, July 12th, 1871, June 22nd, 1871, and June 18, 1877, in so far as they purport to convey title to the lands described in the bill herein, to wit:

Lot number five (5), section thirty-five (35), township one (1) south, range one (1) east; lot number two (2), section three (3), township two (2) south, range one (1) east; lots number one (1) and eight (8), section nine (9), township two (2) south, range one (1) east; lots number one (1), seven (7), eight (8), and nine (9), section fifteen (15), township three (3) south, range one (1) east; lot number one (1), section twenty-five (25), township three (3) south,

range one (1) east; lots one (1), two (2), three (3), and four (4), section thirty-five (35), township three (3) south, range one (1) east; southeast quarter section one (1), township four (4) south, range one (1) east; northeast quarter southwest quarter section eleven (11), township four south, range one (1) east; west half northeast quarter section thirteen (13), township four (4) south, range one (1) east; north half southeast quarter section twenty-three (23), township four (4) south, range one (1) east; lot number one (1), section twenty-seven (27), township four (4) south, range one (1) east; northwest quarter section one (1), township five (5) south, range one (1) east; west half southeast quarter section nine (9), township five (5) south, range one (1) east; east half northwest quarter and east half southwest quarter section thirteen (13), township five (5) south, range one (1) east; northeast quarter section one (1), township six (6) south, range one (1) east; lots number eight (8) and nine (9), section eleven (11), township six (6) south, range one (1) east; west half section thirteen (13), township six (6) south, range one (1) east; west half northeast quarter and west half southeast quarter section thirteen (13), township six (6) south, range one (1) east; east half northeast quarter and lots number one (1) and two (2), section twenty-three (23), township six (6) south, range one (1) east; southeast quarter southeast quarter section nine (9), township one (1) south, range two (2) east; lot number two (2), section eleven (11), township one (1) south, range two (2) east; northeast quarter northeast quarter section fifteen (15), township one (1) south, range two (2) east; south half and lots number one (1), two (2), three (3), and four (4), section twenty-three (23), township one (1) south, range two (2) east; southeast quarter southeast quarter and west half southwest quarter section twenty-seven (27), township one (1) south, range two (2) east; southeast quarter northeast quarter and lots one (1), two (2), and four (4), section twenty-nine (29), township one (1) south, range two (2) east; lots number three (3) and four (4), section thirty-five (35), township one (1) south, range two (2) east; north half of southeast quarter of southwest quarter section one (1), township two (2) south, range two (2) east; southwest quarter northeast quarter and south half northwest quarter section three (3), township two (2) south, range two (2) east; lots four (4) and seven (7), section thirteen (13), township two (2) south, range two (2) east; southwest quarter, northwest quarter, and southwest quarter section twenty-three (23), township two (2) south, range two (2) east; west half northeast quarter, northwest quarter, north half southwest quarter, and northwest quarter southeast quarter section thirty-five (35), township two (2) south, range two (2) east; east half southeast quarter, west half northwest quarter, and west half southwest quarter section one (1), township three (3) south, range two (2) east; lots one (1) and two (2), section three (3), township three (3) south, range two (2) east; southeast quarter northwest quarter, east half southwest quarter, southwest quarter of southwest quarter, east half, and lots one (1), two (2), and three (3) section eleven (11), township three (3) south, range two (2) east; east half section thirteen (13), township three (3) south, range two (2) east; northwest quarter section thirteen (13), township three (3) south, range two (2) east; south half southeast quarter and lots one (1), two (2), three (3), four (4), and (5), section seventeen (17), township three (3)

south, range two (2) east; lot five (5), section fifteen (15), township three (3) south, range two (2) east; southeast quarter southeast quarter and west half southeast quarter section twenty-five (25), township three (3) south, range two (2) east; north half northeast quarter and northwest quarter section twenty-nine (29), township three (3) south, range two (2) east; north half northeast quarter and north half northwest quarter section thirty-one (31), township three (3) south, range two (2) east; southeast quarter northeast quarter, southwest quarter southeast quarter, west half southwest quarter, southeast quarter southwest quarter, southwest quarter northwest quarter section thirty-one (31), township three (3) south, range two (2) east; northwest quarter and south half section one (1), township four (4) south, range two (2) east; southeast quarter, northwest quarter, and east half southwest quarter section three (3), township four (4) south, range two (2) east; west half northwest quarter and west half southwest quarter section five (5), township four (4) south, range two east; northeast quarter section seven (7), township four (4) south, range two (2) east; all section eleven (11), township four (4) south, range two (2) east; north half southeast quarter, west half northeast quarter, and northwest quarter section thirteen (13), township four

(4) south, range two (2) east; east half northwest quarter, southwest quarter, and east half section fifteen (15), township four (4)

south, range two (2) east; lot two (2), section nineteen (19), township four (4) south, range two (2) east; lot four (4), section nineteen (19), township four (4) south, range two (2) east; south half northeast quarter and northeast quarter southeast quarter section twenty-one (21), township four (4) south, range two (2) east; north half northeast quarter and east half northwest quarter section twenty-one (21), township four (4) south, range two (2) east; north half southwest quarter, northwest quarter and east half section twenty-three (23), township four (4) south, range two (2) east; east half northeast quarter and south half section twenty-five (25), township four (4) south, range two (2) east; lots one (1) and two (2), section thirty-five (35), township four (4) south, range two (2) east; lots three (3), four (4), and five (5), section one (1), township five (5) south, range two (2) east; lots one (1), two (2), three (3), and four (4), section three (3), township five (5) south, range two (2) east; lots two (2) and three (3), section five (5), township five (5) south, range two (2) east; lots one (1), two (2), and three (3), section seven (7), township five (5) south, range two (2) east; east half northeast quarter and lots two (2) and three (3), section eleven (11), township five (5) south, range two (2) east; south half northeast quarter, southeast quarter, and lots two (2), three (3), and four (4), section thirteen (13), township five (5) south, range two (2) east; south half southwest quarter section nineteen (19), township five (5) south, range two (2) east; east half northeast quarter, northeast quarter, southeast quarter, and lots one (1) and two

(2), section twenty-five (25), township five (5) south, range two (2) east; south half northeast quarter, northwest quarter, and south half section thirty-five (35), township five (5) south, range two (2) east; southeast quarter, east half southwest quarter, and north half section one (1), township six (6) south, range two (2) east; northwest quarter southeast quarter, north half southwest quarter, and north half section three (3), township six (6) south, range two (2) east; all section five (5),

township six (6) south, range two (2) east; all section seven (7), township six (6) south, range two (2) east; southwest quarter northeast quarter, northwest quarter northwest quarter, southeast quarter, north half southwest quarter, and southwest quarter southwest quarter, section nine (9), township six (6) south, range two (2) east; northeast quarter northeast quarter, southwest quarter northeast quarter, southeast quarter northwest quarter, west half northwest quarter, and west half southwest quarter, section eleven (11), township six (6) south, range two (2) east; all section thirteen (13), township six (6) south, range two (2) east; southeast quarter and north half section fifteen (15), township six (6) south, range two (2) east; southeast quarter and north half section seventeen (17), township six (6) south, range two (2) east; all section nineteen (19), township six (6) south, range two (2) east; all section twenty-one (21), township six (6) south, range two (2) east; all section twenty-three (23), township six (6) south, range two (2) east; southwest quarter and north half section twenty-five (25), township six (6) south, range two (2) east; all section twenty-seven (27), township six (6) south, range two (2) east; northwest quarter northeast quarter, and lot one (1), section five

112 (5), township one (1) south, range three (3) east; southwest quarter northeast quarter, northwest quarter, and lot two (2), section five (5), township one (1) south, range three (3) east; north half northeast quarter, section seven (7), township one (1) south, range three (3) east; northwest quarter southwest quarter, section thirteen (13), township one (1) south, range three (3) east; west half northwest quarter, section fifteen (15), township one (1) south, range three (3) east; lots three (3), four (4), and five (5), section seventeen (17), township one (1) south, range three (3) east; lots one (1) and two (2), section seventeen (17), township one (1) south, range three (3) east; lots seven (7) and eight (8), section nineteen (19), township one (1) south, range three (3) east; east half northeast quarter, east half southeast quarter, southwest quarter southwest quarter, and lot two (2), section twenty-one (21), township one (1) south, range three (3) east; west half southeast quarter and east half southwest quarter, section twenty-one (21), township one (1) south, range three (3) east; south half southwest quarter, section twenty-three (23), township one (1) south, range three (3) east; east half northwest quarter, southwest quarter northwest quarter, southwest quarter, east half southeast quarter, and lot one (1), section twenty-five (25), township one (1) south, range three (3) east; northwest quarter, section twenty-seven (27), township one (1) south, range three (3) east; southwest quarter, section twenty-seven (27), township one (1) south, range three (3) east; south half southeast quarter, section twenty-nine (29), township one (1) south, range three (3) east; northeast quarter, north half southeast quarter, and lots one (1), two (2), three (3), and four (4), section twenty-nine

113 (29), township one (1) south, range three (3) east; northwest quarter, section thirty-one (31), township one (1) south, range three (3) east; northeast quarter northeast quarter, west half northeast quarter, and northwest quarter, section thirty-three (33), township one (1) south, range three (3) east; northeast quarter, east half northwest quarter, north half southeast quarter, and north half southwest quarter, section thirty-five (35), township one (1) south, range three (3) east; northeast quarter and east half southeast quarter, section one (1), township two (2) south,

range three (3) east; northwest quarter and west half southwest quarter, section one (1), township two (2) south, range three (3) east; lot two (2), section nine (9), township two (2) south, range three (3) east; east half northeast quarter, east half southwest quarter, and southeast quarter, section eleven (11), township two (2) south, range three (3) east; north half southeast quarter and northeast quarter southwest quarter, section thirteen (13), township two (2) south, range three (3) east; southeast quarter northeast quarter, and northeast quarter southeast quarter, section seventeen (17), township two (2) south, range three (3) east; lot two (2), section twenty-one (21), township two (2) south, range three (3) east; lot number five (5), section twenty-one (21), township two (2) south, range three (3) east; lots three (3), four (4), five (5), six (6), and eight (8), section twenty-three (23), township two (2) south, range three (3) east; lot number five (5), section twenty-five (25), township two (2) south, range three (3) east; lots one (1) and six (6), section twenty-five (25), township two (2) south, range three (3) east; lot number four (4),

114 section twenty-nine (29), township two (2) south, range three (3) east; west half northwest quarter and lots three (3), four (4), five (5), six (6), and seven (7), section thirty-one (31), township two (2) south, range three (3) east; south half southeast quarter and lots three (3), four (4), and five (5), section thirty-five (35), township two (2) south, range three (3) east; lots one (1) and two (2), section thirty-five (35), township two (2) south, range three (3) east; lots three (3), four (4), five (5), six (6), seven (7), eight (8), and eleven (11), section one (1), township three (3) south, range three (3) east; lots one (1), two (2), and three (3), section three (3), township three (3) south, range three (3) east; north half northeast quarter, southeast quarter southwest quarter, and lots one (1), two (2), and three (3), section five (5), township three (3) south, range three (3) east; west half northeast quarter, west half southeast quarter, southwest quarter, and lots one (1), two (2), three (3), and four (4), section seven (7), township three (3) south, range three (3) east; northwest quarter southwest quarter, and lots one (1), two (2), and three (3), section nine (9), township three (3) south, range three (3) east; northwest quarter southeast quarter, and lots five (5), six (6), seven (7), and ten (10), section thirteen (13), township three (3) south, range three (3) east; lots one (1), two (2), three (3), six (6), seven (7), and eight (8), section fifteen (15), township three (3) south, range three (3) east; southwest quarter northwest quarter, and lot one (1), section seventeen (17), township three (3) south, range three (3) east; north half northwest quarter, section nineteen (19), township three (3) south, range three (3) east; northwest quarter northeast quarter, section nineteen (19), township three (3) south, range three (3) east; west half southeast quarter section nineteen (19), township three (3) south, range three (3) east; lot one (1), section twenty-three (23), township three (3) south, range three (3) east; lots one (1), two (2), three (3), four (4), five (5), six (6), seven (7), and eight (8), section twenty-five (25), township three (3) south, range three (3) east; southeast quarter northeast quarter, northeast quarter southeast quarter, southwest quarter southeast quarter, and lots one (1), two (2), three (3), four (4), five (5), section twenty-seven (27), township three (3) south, range three (3) east; southeast quarter, south half southwest quarter, northeast quarter northwest quarter, and lots

one (1), two (2), three (3), and four (4), section twenty-nine (29), township three (3) south, range three (3) east; northwest quarter northwest quarter section twenty-nine (29), township three (3) south, range three (3) east; northeast quarter southeast quarter, south half southeast quarter, south half southwest quarter, and northwest quarter southwest quarter section thirty-one (31), township three (3) south, range (3) east; northwest quarter southwest quarter and northwest quarter section thirty-three (33), township three (3) south, range three (3) east; north half section thirty-five (35), township three (3) south, range three (3) east; north half north half southwest quarter, southeast quarter, and lots one (1), and two (2), section one (1), township four (4) south, range three (3) east; northeast quarter northwest quarter, southwest quarter northwest quarter, northwest quarter, southwest quarter, and south half southeast quarter section three (3), township four (4) south, range three (3) east; north half southeast quarter southwest quarter southeast quarter, and west half section five (5), township four (4) south, range three (3) east; northeast quarter, south half northwest quarter, north half southwest quarter, and lot one (1), section seven (7), township four (4) south, range three (3) east; west half northeast quarter, west half southeast quarter, and northeast quarter northwest quarter section nine (9), township four (4) south, range three (3) east; lots one (1), two (2), and three (3), and northwest quarter northeast quarter section eleven (11), township four (4) south, range three (3) east; northeast quarter, west half southeast quarter, and west half section thirteen (13), township four (4) south, range three (3) east; west half northwest quarter section seventeen (17), township four (4) south, range three (3) east; west half southwest quarter section nineteen (19), township four (4) south, range three (3) east; east half northeast quarter, west half northwest quarter, and south half section twenty-one (21), township four (4) south, range three (3) east; all section twenty-three (23), township four (4) south, range three (3) east; northwest quarter northwest quarter, southwest quarter, and east half section twenty-five (25), township four (4) south, range three (3) east; southwest quarter, west half southeast quarter, and north half section twenty-seven (27), township four (4) south, range three (3) east; east half northeast quarter, southwest quarter northeast quarter, northwest quarter northwest quarter, east half southwest quarter, and southeast quarter section twenty-nine (29), township four (4) south, range three (3) east; east half northeast quarter, southwest quarter northwest quarter, and southeast quarter section thirty-one (31), township four (4) south, range three (3) east; north half southeast quarter north half southwest quarter, southwest quarter southwest quarter, and north half section thirty-three (33), township four (4) south, range three (3) east; southwest quarter northeast quarter, south half northwest quarter southwest quarter, and northwest quarter, southeast quarter section thirty-five (35), township four (4) south, range three (3) east; southeast quarter northeast quarter, east half southeast quarter, and southwest quarter southeast quarter section thirty-five (35), township four (4) south, range three (3) east; all section one (1), township five (5) south, range three (3) east; all section three (3), township five (5) south, range three (3) east; south half northeast quarter, south half northwest quarter, southwest quarter, and lots one (1), and two (2), section five (5), township five (5) south, range three (3) east; northeast quarter southeast quarter, northwest quarter

northeast quarter, southwest quarter, north half southeast quarter, southeast quarter of southeast quarter, and lot three (3), section seven (7), township five (5) south, range three (3) east; all section nine (9), township five (5) south, range three (3) east; all section eleven (11), township five (5) south, range three (3) east; all section thirteen (13), township five (5) south, range three (3) east; all section fifteen (15), township five (5) south, range three (3) east; all section seventeen (17), township five (5) south, range three (3) east; southwest quarter northeast quarter, south half northwest quarter, northwest quarter northwest quarter, and south half section nineteen (19), township five (5) south, range three (3) east; all section twenty-one (21), township five (5) south, range three (3) east; all section

118 twenty-three (23), township five (5) south, range three (3) east; all section twenty-five (25), township five (5) south, range three (3) east; all section twenty-seven (27), township five (5) south, range three (3) east; east half southeast quarter, west half southwest quarter, and north half section twenty-nine (29), township five (5) south, range three (3) east; northwest quarter northeast quarter, east half northwest quarter southeast quarter, northeast quarter southwest quarter, and lots one (1) and two (2) section thirty-one (31), township five (5) south, range three (3) east; all section thirty-three (33), township five (5) south, range three (3) east; north half section thirty-five (35), township five (5) south, range three (3) east; all section one (1), township one (1) south, range four (4) east; all section three (3), township one (1) south, range four (4) east; all section eleven (11), township one (1) south, range four (4) east; all section thirteen (13), township one (1) south, range four (4) east; northwest quarter and east half section fifteen, township one (1) south, range four (4) east; northeast quarter section seventeen (17), township one (1) south, range four (4) east; southwest quarter section twenty-three (23), township one (1) south, range four (4) east; northwest quarter and east half section twenty-three (23), township one (1) south, range four (4) east; all section twenty-five (25), township one (1) south, range four (4) east; northeast quarter and west half section one (1), township two (2) south, range four (4) east; north half southeast quarter section one (1), township two (2) south, range four (4) east; east half northeast quarter and northeast quarter southeast quarter, section three (3), township two (2) south, range four (4) east; east half northeast

119 quarter and southeast quarter section seven (7), township two (2) south, range four (4) east; all section nine (9), township two (2) south, range four (4) east; all section eleven (11), township two (2) south, range four (4) east; north half northeast quarter, north half northwest quarter, southwest quarter northwest quarter, northwest quarter southwest quarter, and southeast quarter section thirteen (13), township two (2) south, range four (4) east; all section fifteen (15), township two (2) south, range four (4) east; north half section seventeen, township two (2) south, range four (4) east; north half northeast quarter, southeast quarter northeast quarter, and lots one (1), two (2), and four (4), section nineteen (19), township two (2) south, range four (4) east; northeast quarter northeast quarter and southwest quarter section twenty-one (21), township two (2) south, range four (4) east; north half northeast quarter, northeast quarter northwest quarter, west half northwest quarter, south half southwest quarter, and south half southeast quarter section twenty-

three (23), township two (2) south, range four (4) east; all section twenty-five (25), township two (2) south, range four (4) east; south half northeast quarter, south half northwest quarter, and south half section twenty-seven (27), township two (2) south, range four (4) east; east half northeast quarter, southwest quarter northeast quarter, and southeast quarter southeast quarter section thirty-three (33), township two (2) south, range four (4) east; all section thirty-five (35), township two (2) south, range four (4) east; all section one (1), township three (3) south, range four (4) east; southeast quarter southwest quarter section three (3), township three (3) south, range four (4) east; south half southeast quarter section three (3), township three (3) south, range four (4) east; lots two (2) and three (3), section five (5), township three (3) south, range four (4) east; lots one (1) and two (2), section nine (9), township three (3) south, range four (4) east; all section eleven (11), township three (3) south, range four (4) east; all section thirteen (13), township three (3) south, range four (4) east; southeast quarter northeast quarter, west half northwest quarter, and lots one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), and ten (10), section nineteen (19), township three (3) south, range four (4) east; north half northeast quarter, southwest quarter northeast quarter, and lots one (1), two (2), three (3), and four (4), section twenty-one (21), township three (3) south, range four (4) east; lots one (1), two (2), three (3), five (5), six (6), and seven (7), section twenty-three (23), township three (3) south, range four (4) east; east half northwest quarter and east half section twenty-five (25), township three (3) south, range four (4) east; west half northwest quarter and south half section twenty-seven (27), township three (3) south, range four (4) east; south half southeast quarter and lots one (1), two (2), three (3), five (5), seven (7), and eight (8), section twenty-nine (29), township three (3) south, range four (4) east; northwest quarter northwest quarter and lots one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), and nine (9), section thirty-one (31), township three (3) south, range four (4) east; east half and lots one (1), two (2), three (3), four (4), and five (5), section thirty-three (33), township three (3) south, range four (4) east; south half southwest quarter section thirty-five (35), township three (3) south, range four (4) east; southwest quarter and east half section one (1), township four (4) south, range four (4) east; northwest quarter, east half southwest quarter, east half, and lots one (1) and two (2), section three (3), township four (4) south, range four (4) east; northwest quarter northeast quarter, northwest quarter northwest quarter, southwest quarter, and lot one (1), section seven (7), township four (4) south, range four (4) east; southeast quarter southeast quarter and lots one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), and nine (9), section nine (9), township four (4) south, range four (4) east; northwest quarter, east half southwest quarter, and east half, and lots one (1) and two (2), section eleven (11), township four (4) south, range four (4) east; all section thirteen, township four (4) south, range four (4) east; south half southwest quarter, east half, and lots one (1), two (2), three (3), four (4), and five (5), section fifteen (15), township four (4) south, range four (4) east; southwest quarter northwest quarter, southwest quarter, south half southeast quarter, and lots one (1), four (4), five (5), seven (7), and eight (8),

section seventeen (17), township four (4) south, range four (4) east; south half northeast quarter, and south half northwest quarter, and south half section nineteen (19), township four (4) south, range four (4) east; all section twenty-one (21), township four (4) south, range four (4) east; all section twenty-three (23), township four (4) south, range four (4) east; west half section twenty-five (25), township four (4) south, range four (4) east; all section twenty-seven (27), township four (4) south, range four (4) east; all section twenty-nine (29), township four (4) south, range four (4) east; all section thirty-one (31), township four (4) south, range four (4) east; all section thirty-three (33), township four (4) south, range four (4) east; all section thirty-five (35), township four (4) south, range four (4) east; west half section three (3), township five (5) south, range four (4) east; all section five (5), township five (5) south, range four (4) east; all section seven (7), township five (5) south, range four (4) east; all section nine (9), township five (5) south, range four (4) east; west half section five (5), township one (1) south, range five (5) east; all section seven (7), township one (1) south, range five (5) east; all section seventeen (17), township one (1) south, range five (5) east; all section nineteen (19), township one (1) south, range five (5) east; west half section twenty-one (21), township one (1) south, range five (5) east; all section twenty-nine (29), township one (1) south, range five (5) east; northeast quarter, east half northwest quarter, lot one of northwest quarter, northeast quarter southwest quarter, and southeast quarter section thirty-one (31), township one (1) south, range five (5) east; west half northeast quarter, west half southeast quarter, and west half section thirty-three, township one (1) south, range five (5) east; all section three (3), township two (2) south, range five (5) east; all section five (5), township two (2) south, range five (5) east; southwest quarter northeast quarter, south half northwest quarter, and lots one (1), two (2), three (3), and five (5), section seven (7), township two (2) south, range five (5) east; north half section nine (9), township two (2) south, range five (5) east; west half section eleven (11), township two (2) south, range five (5) east; all section fifteen (15), township two (2) south, range five (5) east; northeast quarter northwest quarter, northwest quarter and south half southwest quarter section seventeen (17), township two (2) south, range five (5) east; west half southeast quarter, northeast quarter and west half section nineteen (19), township two (2) south, range five (5) east; southwest quarter northwest quarter and south half section twenty-one (21), township two (2) south, range five (5) east; west half section twenty-three (23), township two (2) south, range five (5) east; all section twenty-seven (27), township two (2) south, range five (5) east; east half southwest quarter southeast quarter and north half section twenty-nine (29), township two (2) south, range five (5) east; all section thirty-one (31), township two (2) south, range five (5) east; all section thirty-three (33), township two (2) south, range five (5) east; all section three (3), township three (3) south, range five (5) east; all section five (5), township three (3) south, range five (5) east; southeast quarter and north half section seven (7), township three (3) south, range five (5) east; southwest quarter section seven (7), township three (3) south, range five (5) east; southeast quarter section nine (9), township three (3) south, range five (5) east; west half section nine (9), township three (3) south,

range five (5) east; west half section fifteen (15), township three (3) south, range five (5) east; all section twenty-one (21), township three (3) south, range five (5) east; all section seventeen (17), township three (3) south, range five (5) east; all section nineteen (19), township three (3) south, range five (5) east; all section twenty-nine (29), township three (3) south, range five (5) east; north half section thirty-one (31), township three (3) south, range five (5) east; south half section thirty-one (31), township three (3) south, range five (5) east; northwest quarter section thirty-three (33), township three (3) south, range five (5) east; all section seven (7), township four (4) south, range five (5) east; south half section thirty-five (35), township five (5) south, range three (3) east; east half section twenty-five (25), township four (4) south, range four (4) east; all section one (1), township two (2) south, range five (5) east; east half section eleven (11), township two (2) south, range five (5) east; all section thirteen (13), township two (2) south, range five (5) east; east half section twenty-three (23), township two (2) south, range five (5) east; all section twenty-five (25), township two (2) south, range five (5) east; all section thirty-five (35), township two (2) south, range five (5) east; all section one (1), township three (3) south, range five (5) east; all section eleven (11), township three (3) south, range five (5) east; all section thirteen (13), township three (3) south, range five (5) east; east half section fifteen (15), township three (3) south, range five (5) east; all section twenty-three (23), township three (3) south, range five (5) east; north half northeast quarter, north half northwest quarter section twenty-five (25), township three (3) south, range five (5) east; south half northeast quarter, south half northwest quarter and south half section twenty-five (25), township three (3) south, range five (5) east; south half northeast quarter, south half northwest quarter and south half section twenty-seven (27), township three (3) south, range five (5) east; north half northeast quarter and north half northwest quarter section twenty-seven (27), township three (3) south, range five (5) east; northeast quarter section thirty-three (33), township three (3) south, range five (5) east; south half section thirty-three (33), township three (3) south, range five (5) east; all section thirty-five (35), township three (3) south, range five (5) east; all section one (1), township four (4) south, range five (5) east; all section three (3), township four (4) south, range five (5) east; all section five (5), township four (4) south, range five (5) east; all section nine (9), township four (4) south, range five (5) east; all section eleven (11), township four (4) south, range five (5) east; all section thirteen (13), township four (4) south, range five (5) east; all section fifteen (15), township four (4) south, range five (5) east; all section seventeen (17), township four (4) south, range five (5) east; all section twenty-one (21), township four (4) south, range five (5) east; all section twenty-three (23), township four (4) south, range five (5) east; northeast quarter section twenty-seven (27), township four (4) south, range five (5) east, be, and the same hereby are, canceled and decreed null and void.

II.

That the deed warranty in form, executed February 26th, 1880, by defendant The Oregon and California Railroad Company, to defendant John A. Hurlburt for the southeast quarter and the south half of the

northeast quarter of section number three (3), township number one (1) south, range four (4) east, in Multnomah County, Oregon, be, and the same hereby is, canceled and decreed null and void.

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III.

That the several deeds numbered in the bill herein, to wit, the deed from the defendant The Oregon and California Railroad Company, to Jacob Goldstrap, of date November 5th, 1879, the deed by Jacob Goldstrap to Sylvester Evans, and the deed from Sylvester Evans to Thomas L. Evans, of date July 13th, 1883, all purporting to convey title to the northeast quarter of the northeast quarter and the east half of the northwest quarter of the northeast quarter of section three (3), township one (1) south, range four (4) east, in Multnomah County, Oregon, be, and the same hereby are, canceled and decreed null and void.

And it is further ordered, adjudged, and decreed that the costs, disbursements, and charges of this suit, taxed at \$, be paid by defendant, The Oregon and California Railroad Company, and that complainant, The United States, have judgment therefor.

W. B. GILBERT, *Judge*.

(Endorsed:) Filed Sept. 9, 1895. J. A. Sladen, clerk.

And afterwards, to wit, on the 9th day of September, 1895, there was duly filed in said court an opinion in words and figures as follows, to wit:

127 In the circuit court of the United States for the district of Oregon. September 9, 1895.

THE UNITED STATES

vs.

OREGON & CALIFORNIA RAILROAD
Company et al.

No. 1982. In equity.

Opinion of the court on final hearing.

Suit by the United States against the Oregon & California Railroad Company, John A. Hurlburt, and Thomas L. Evans, to cancel patents and restore land to the public domain. On final hearing. Decree for the complainant.

John M. Gearin and George H. Williams for the United States; W. D. Fenton and L. E. Payson for the defendant corporation.

GILBERT, circuit judge:

By this suit the United States seek to cancel certain patents issued to the Oregon & California Railroad Company of lands within the State of Oregon claimed by said company to have been earned under the terms of the act of Congress of July 25, 1866, granting it lands to aid in the construction of a line of railroad beginning at Portland, in the State of Oregon, and running thence south to the southern boundary of the State. It is alleged in the bill that the same lands had been granted to the Northern Pacific Railroad Company in the grant to that company

128 of July 2, 1864, and hence were not within the purview of the later grant. The cause was first heard upon a demurrer to the bill, and many of the questions involved in the suit were at that time considered and disposed of. (*United States v. Oregon & California Railroad Company et al.*, 57 Fed., 890.) The case now comes on to be heard upon the issues thereafter made by the answer of the defendant corporation, and the proofs which were thereupon taken. It is shown that the map filed by the Northern Pacific Railroad Company on the 13th day of August, 1870, and which upon the decision of the demurrer was assumed to be a map of definite location, was not such, but was a map of the general route of the line of that company's road. Upon that fact, so established by the proof, and not disputed by the complainant, it is now urged by the defendants that the land in controversy in this suit passed to the Oregon & California Railroad Company by virtue of its grant. Its contention is that the lands never were taken from the public domain by the grant to the Northern Pacific Railroad Company, for the reason that the title never passed to that company, and that such title could never pass until there was a definite location of the road; that by the act of definitely locating the line the grantee of the railroad lands selects the granted lands from the mass of public lands among which it has the right to choose, and designates those to which the title passes, and that without such definite location of line and consequent selection of lands no title is vested; that notwithstanding the settled doctrine of the decisions that the grant is in presenti, it is nevertheless not in
 129 presenti as to any particular lands until by the act of the grantee it is made certain what lands are to be taken. It is proven that there was never a definite location of the branch line of the Northern Pacific Railroad. The lands in controversy in this suit lie within the place limits of a line of road such as that indicated by the maps of general route of 1865 and 1870. The decision of the case on final hearing must therefore depend upon the effect of the language of the act granting land in aid of the branch line and the filing of the preliminary maps of that line.

It is unnecessary here to repeat the language of the grant further than to say that it was a grant of public lands, and that it authorized the company to build and operate a continuous road, beginning at Lake Superior and running thence westerly to some point on Puget Sound, "with a branch line via the valley of the Columbia River to a point at or near Portland, in the State of Oregon, leaving the main trunk line at the most suitable place, not more than 300 miles from its western terminus." There can be no doubt that if by the terms of the act the line of the branch road had been definitely fixed as running upon a certain line, or upon a straight line between two designated points, the title would have passed from the date of the grant and its acceptance by the grantee, for there would be no need of further or more definite location. The description of the branch line as contained in the act does not, it is true, fix its point of beginning or ending, nor definitely determine the location of any portion thereof. It is evident, however, that the valley of the Columbia River, for a large portion of the route which
 130 would necessarily be covered by such a branch line, is so narrow that the road must have followed either the north or the south

bank of the river, and it will not be disputed that a road built in compliance with the terms of the grant, and on the line therein defined, would have been confined to a narrow strip of territory. By both the map of 1865 and the map of 1870 it follows the north bank of the river. The company had the right to choose either bank, but it never exercised that right by making a definite location of the road. Were the lands, therefore, under the terms of the act, granted lands, and hence not public lands, from the date of the grant, and were they on that account excluded from the subsequent grant to the defendant corporation? It is not necessary that the title should have passed to the Northern Pacific Railroad Company in order that the lands should be placed in such attitude to the public domain as to be excluded from a subsequent grant in aid of another railroad. It is enough if they were in any way segregated from the public lands so that at the date of the junior grant it will be presumed to have been the intention of Congress to exclude them from its operation.

I hold that it was such segregation to set apart a larger area within which the lands granted to the Northern Pacific Company were to be selected by it. It was sufficient if the lands in controversy in this suit were subject to the contingency of being within the place limits of the branch line whenever that line should receive its definite location. Said the court in *Bardon vs. N. P. R. R. Co.* (145 U. S., 538): By public land "is meant such land as is open to sale or other disposition
131 under the general laws. All land to which any claim or rights of others have attached does not fall within the designation of public lands."

In *Wilcox vs. Jackson* (13 Pet., 513), it was said that: "Whosoever a tract of land shall have once been legally appropriated to any purpose, from that moment the land thus appropriated becomes severed from the mass of public lands, and that no subsequent law or proclamation or sale would be construed to embrace it or to operate upon it, although no reservation were made of it."

If the Northern Pacific branch road had been located on any possible line within the terms of the act, so as to go by way of the Columbia River valley to a point at or near Portland, the greater portion at least of the lands in controversy would necessarily have fallen within its place limits. It is clear that Congress did not intend that the grant to the Northern Pacific Company should be abridged or impaired by the subsequent grant to the Oregon & California Company, nor that any portion of the subsidy to the latter company should depend upon the contingency of the failure of the former company to definitely locate its line of road, nor did it intend to give to the latter company lands that had been set apart for the former—lands within which the Northern Pacific Company had the right to earn the subsidy given it by the act.

The defendants rely upon the case of *Carr vs. Quigley* (149 U. S., 652), to sustain their contention that the whole tract from which the branch-line grant could be satisfied was not set apart from the public lands by the granting act, so as to be without the scope of the subsequent grant to the Oregon & California Railroad Company. In that case the court applied and affirmed the doctrine of *Newhall vs. Sanger* (92 U. S., 761), in which it was held that a grant to a
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railroad company of lands not sold, reserved, or otherwise disposed of by the United States, and to which a homestead or pre-emption claim may not have been attached at the time the line of the road was definitely fixed, and providing that such grant shall not defeat or impair any pre-emption, homestead, swamp land, or other lawful claim, nor include any Government reservation, or mineral lands, or the improvements of any bona fide settler, did not include lands within the boundary of an alleged Mexican or Spanish grant which was sub judice at the time the Secretary of the Interior ordered a withdrawal of the lands along the route of the road; that lands within such boundaries of such alleged grant, being thus under consideration in the courts, are not public lands within the meaning of the acts of Congress in making grants to aid the construction of works of internal improvement. In the *United States vs. McLaughlin* (127 U. S., 449) the court had under consideration the conflicting rights of the Central Pacific Railroad Company, of California, under a grant similar to that of the Northern Pacific Railroad Company in this case, and the grantees under a Mexican grant of a certain quantity of land to be located within the limits of a larger area. It was held that the fact that the Mexican grant was sub judice at the time of the grant to the railroad company did not exclude the whole of the larger area from which it was to be taken from the operation of the railroad grant; but the controlling reason of the decision was declared to be the fact that the right to locate the smaller area within the greater was not vested in the donee of the grant, but remained in the United States, and the further fact that, notwithstanding the grant to aid the railroad company, there still remained within the described area sufficient land to meet the demands of the grant. The court said: "It is in the option of the Government, not of the grantee, to locate the quantity granted; and, of course, a grant by the Government of any part of the territory contained within the outside limits of the grant only reduces by so much the area within which the original grantee's proper quantity may be located. If the Government has a right to say where it shall be located, it certainly has the right to say where it shall not be located; and if it sells land to a third person at a place within the general territory of the original grant, it is equivalent to saying that the quantity due to the original grantee is not to be located there. In other words, if the territory comprehended in the outside limits and bounds of a Mexican grant contains 80 leagues and the quantity granted is only 10 leagues, the Government may dispose of 70 leagues without doing any wrong to the original grantee. In *Carr vs. Quigley* the same question was again considered by the court, and the doctrine of the *United States vs. McLaughlin* was expressly approved.

It is contended that the implied doctrine of those decisions is that the rule there announced applies likewise to cases where the right of selection is vested, not in the United States, but in the railroad company. Such is not perceived to be their meaning. It is rather the distinct doctrine of those cases that it was only because the United States had a right to make the selection of the granted quantity of land within the larger area called for in the Mexican grant that a portion of the described tract was held to be subject to the subsequent grant of the railroad company, and that otherwise the court would have

considered the whole tract, so set apart and subjected to the right of the grantee, excluded from the public lands and not included within the grant of lands in aid of works of internal improvement. The inference is that if the right of selection had been vested in the grantee of the Mexican grant the whole tract would have remained subject to his right, and therefore not subject to a subsequent grant so long as the first right existed. A defined tract of land out of which a smaller area has been granted, the location of which is to be made by the grantor, is in a widely different condition, so far as concerns the grantor's right, from a tract in which the right to select the granted portion is vested in the grantee. In the former case a subsequent grant to another of a portion of the described area is only an exercise of the grantor's right of selection. It is his declaration that the portion so subsequently bestowed by him upon another has been eliminated from the described tract and has been taken from the lands out of which the first grant is to be satisfied. In the case of the Mexican grants this power of selection remained in the United

States. Its exercise in no way contradicted or subverted the terms
135 of the grant, or abridged the rights of the grantee thereunder.

It is not so in the case of railroad land grants such as those under consideration in this case. The United States had not the right to locate the lands granted to aid the Northern Pacific Railroad Company. The grant to that company carried to the grantee the right to make selection of the granted lands. It might definitely locate its line in good faith, in compliance with the requirement of the act, and by such location select and acquire the lands within the place limits upon both sides of its line. It is unimportant that the company never exercised this power. The right was established by the act, and it still subsisted when Congress, by a later grant, bestowed lands in aid of the construction of the Oregon & California Railroad.

But at the date of the grant to the Oregon & California Railroad Company the lands in controversy herein were not only affected by the fact of the prior grant to aid the branch line of the Northern Pacific road, but that company had upon March 6, 1865, filed in the General Land Office its map of the general route of its road, and had thereupon asked for a withdrawal of the granted lands within the prescribed area upon both sides of its line. The map so filed, known as the "Perham" map, was not satisfactory to the Commissioner of the General Land Office, and he notified the company that it was disapproved, first, because it did not show the exact location, "indicating by flagstuffs the progress of the survey," nor the "precise portions of each section or smallest legal subdivision cut by the road;" and, second, because it was not filed in the district
136 land offices as well as in the General Land Office. These were not valid objections. It has never been held that the map of general route must show a line definitely located upon the ground with all the accuracy of a final survey. It has been considered sufficient if "its general course and direction are determined after an actual examination of the country or from a knowledge of it, and it is designated by a line on the map showing the general features of the adjacent country and the places through or by which it will pass." (*Buttz vs. Railroad Company*, 119 U. S., 55.) It would have been impossible at that time to have made a map of the branch line such as was required by the Com-

missioner. The court will take knowledge of the fact that at that date a large portion of the public lands on the line of the road were unsurveyed. By the Perham map the position of the branch line is indicated with reference to the Columbia River. By the scale of the map its distance from that river at any point is approximately ascertainable. If a withdrawal of the granted lands within the place limits upon both sides of the general route so selected had been ordered by the Commissioner of the General Land Office there can be no doubt that the effect of such action would have been to segregate the withdrawn lands from the public lands subject to disposal by subsequent grant, and would have operated to reserve them therefrom. Were the rights of the company affected by the fact that the Commissioner of the General Land Office erroneously found the map unsatisfactory for the reasons above stated and notified the company of his disapproval? The Supreme Court has held that "when the general route of the road is thus fixed in good faith, and information thereof
 137 given to the land department by filing a map thereof with the Commissioner of the General Land Office or the Secretary of the Interior, the law withdraws from sale or preemption the odd sections, to the extent of 40 miles on each side." (*Buttz vs. Railroad Co.*, supra.) While it is true that in the case just cited there is no direct ruling upon the question of the power of the Commissioner of the General Land Office and the effect of his approval or rejection of a map, the clear import of the language of the opinion is that the Commissioner is not clothed with power to affect the rights of the railroad company, and it would seem that upon the filing of a map, which, in fact, complies with the law and is filed in good faith, the law itself operates to withdraw the granted lands.

It is further urged that the Perham map was defective for reasons other than those stated by the Commissioner of the General Land Office in his letter disapproving the same; that that portion of the line by way of the Columbia River valley does not end at a point "at or near Portland," but continues in an unbroken line to the waters of Puget Sound, and that it is not designated upon the map as a branch line, and that, so far as the map indicates, it appears to be a main line. The act gave authority, together with a right of way and a subsidy, to build a main line from Lake Superior to the waters of Puget Sound and a branch line as heretofore indicated. In the map there is no designation of either line as the main line or the branch line. So far as the map locates the road west of the Rocky Mountains, it complies strictly with the terms of
 138 the act, with the exception that the line by the Columbia River valley, instead of ending at a point at or near Portland, proceeds further and ends at the waters of Puget Sound. The fact that the construction of a road from Portland to Puget Sound was not authorized by the grant does not impair the validity of the location of that part of the road which was authorized and which was located in compliance with its terms; and it is immaterial that the main line and the branch line are not so respectively designated upon the map. They are in the location called for by the language of the granting act, and it will be presumed that they are located in pursuance thereof. This map had been on file for more than a year when the grant to the Oregon and California Railroad was made, and it not only furnishes evidence of the loca-

tion of the general route of the line of the Northern Pacific branch line, and of the consequent segregation of those lands from the public lands by operation of law, but it was notice to the Oregon and California Railroad Company of the prior grant and the prior bestowal of these lands in aid of another road.

But it is conceded that the map of 1865 was ineffective to accomplish the withdrawal of lands, and that its rejection by the Commissioner of the Land Office is a conclusive adjudication of its insufficiency; the map of 1870 was open to no such objection. Upon its receipt in the Land Office the withdrawal of lands was made upon the records. No reason is seen why the map of general route which is required by the act, even if filed after the date of the junior grant, does not, so far as the junior grant is concerned, serve to sufficiently identify the lands covered by the prior grant. It is true

139 that after filing the map of general route of 1870, the Northern Pacific Company still possessed the right to change the line whenever it should make its definite location thereof, and that it was required by the act to file such map of definite location for the purpose of finally indicating the lands that were to be patented to it. But until such final map was filed, the map of general route, whereby the withdrawal was in fact accomplished, served to sufficiently identify the granted lands, notwithstanding the reserved right to alter its location. In the absence of such map of final location, and until the same is filed, it is a reasonable presumption that the granted lands are those which have been withdrawn in pursuance of the filings of the map of general route, as required under the terms of the grant.

In any view of the case, I find no warrant for holding that it was the intention of Congress to grant these lands to the Oregon and California Railroad Company. A decree will be entered for the United States, as prayed for in the bill.

(Signed)

W. B. GILBERT, *Judge*.

(Endorsed :) Filed September 9, 1895. J. A. Sladen, clerk.

And, afterwards, to wit, on the 30th day of December, 1895, there was duly filed in said court a petition for appeal and assignment of error, in words and figures, as follows, to wit:

140 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES, COMPLAINANT,

vs.

THE OREGON & CALIFORNIA RAILROAD COMPANY,

John A. Hurlburt, and Thomas L. Evans, defendants.

} In equity.

Petition on appeal.

The defendants above named, conceiving themselves aggrieved by the decree rendered in the above-entitled cause, on September 9th, 1895, in the above-entitled court, and thereafter filed and entered as of that date, do hereby appeal from the said decree to the United States circuit court of appeals for the ninth circuit, for the reasons specified in the assignment of errors, which is filed herewith; and they pray that this appeal

may be allowed, and that a transcript of the record proceedings and paper, upon which said decree was made, duly authenticated, may be sent to the United States circuit court of appeals for the ninth district.

(Sgd.) BRONAUGH, McARTHUR, FEXTON & BRONAUGH,
Solicitors for said Defendants.

Dated December 30th, 1895.

141 The foregoing claim of appeal is allowed this 30th day of December, 1895.

(Sgd.) WM. B. GILBERT,
Circuit Judge for the Ninth Circuit.

In the circuit court of the United States for the district of Oregon.

THE UNITED STATES, COMPLAINANT,	}
<i>vs.</i>	
THE OREGON AND CALIFORNIA RAILROAD COMPANY, John A. Hurlburt, and Thomas L. Evans, defendants.	

Assignment of errors on appeal.

The appellants and defendants above named by the undersigned, in connection with their position on appeal, herein say that the decree in this cause is erroneous and against their just rights, in the following particulars:

I.

The court erred in overruling the demurrer to the bill of complaint, which said demurrer was for and on the part of all of the defendants in said cause in this, that the said bill of complaint does not disclose any equities in the complaint, which entitled it to any relief.

II.

The court erred in deciding that the lands in suit were granted 142 and intended to be granted to the Northern Pacific Railroad Company by the act of Congress of July 2nd, 1864, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound on the Pacific Coast by the northern route," in this,

1st. Because the pleadings and exhibits thereto and the evidence show that the lands described in the bill of complaint and in the patents referred to therein were granted to the appellant, the Oregon & California Railroad Company, by the act of Congress of date July 25, 1866, under an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland, in Oregon."

2nd. Because the pleadings and exhibits thereto, and the evidence show that the Northern Pacific Railroad Company did not file any map of definite location at any time between Wallula, on the Columbia River, by way of the Columbia River Valley, to Puget Sound, or to a point at

or near Portland, or affecting the lands described in the bill of complaint, or construct any road opposite to or coterminous with said lands.

3d. Because the pleadings and exhibits thereto, and the evidence show that the only maps filed by the Northern Pacific Railroad Company in the General Land Office, or Department of the Interior, claimed to affect the lands described in the bill of complaint, were maps of general route, filed August 13, 1870, and long after said lands had been granted to the Oregon & California Railroad Company under said act of Congress, of date July 25, 1866.

143 4th. Because the pleadings and exhibits thereto and the evidence show that the maps filed with the bill of complaint, marked "Exhibit C," and known and described as the Perham map, pretended by the complainant to be a map of general route of the line of said Northern Pacific Railroad Company, was made and filed without surveying or marking the line of the proposed railroad upon the ground, or of any knowledge of the country through which said map pretended to trace any line of any railroad, and that said map contained thereon two conjectural and imaginary route lines, and the said map is void because indefinite and not authorized by the act of Congress of July 2nd, 1864, and was thereafter abandoned and waived by the Northern Pacific Railroad Company.

5th. Because the pleadings and exhibits thereto and the evidence further show that the said map marked "Exhibit C," known and described as the Perham map, was rejected by the Commissioner of the General Land Office as void and ineffective, and such rejection was acquiesced in and assented to by the Northern Pacific Railroad Company, and because, as a matter of law, the said map did not have and could not have any effect upon the lands described in the bill of complaint or any part thereof.

6th. Because the pleadings, exhibits thereto, and the evidence show that certain of the lands described in the bill of complaint, and in the patents therein referred to, are distant more than twenty miles from each and every line for a railroad shown or pretended to be designated on the said map "Exhibit C."

The court erred in decreeing and adjudging that the patents in said bill of complaint mentioned and described were void and of no force and effect, and that they should be set aside, canceled, and annulled in so far as they affected the lands described in the bill of complaint, and in decreeing and adjudging that the conveyances to said defendants, John A. Hurlburt and Thomas L. Evans, and their grantors, should be set aside, canceled, and annulled, and that the defendants took nothing by the said conveyances of the said parcels of lands as claimed by said defendants in said bill of complaint, in this:

1st. Because the pleadings and exhibits thereto and the evidence showed that the said patents were issued to the said Oregon & California Railroad under and in pursuance of said act of Congress of July 25, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad Company

in California to Portland, in Oregon, and because said lands were earned by said Oregon and California Railroad Company, under said grant, by the construction of said road in accordance therewith, and because said lands conveyed to said defendants, Hurlburt and Evans, were a part of said grant, and they were at the date of said decree the owners in fee simple of the premises described in the said conveyances.

2nd. Because the pleadings and exhibits thereto and the evidence show that the said lands described in the said patents and in the bill of complaint mentioned were on July 25, 1866, public lands of the United States subject to grant to the said Oregon & California Railroad Company, and had not been theretofore reserved, sold, or granted by the United States.

IV.

The court erred in decreeing and adjudging that the lands described in the complaint and in the patents therein mentioned were on the 2d day of July, 1864, granted by act of Congress to the Northern Pacific Railroad Company, under an act of Congress of said date, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound on the Pacific Coast by the northern route," and that the same were forfeited to the United States by act of Congress of date Sept. 29th, 1890, entitled "An act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads and other purposes," and that the said lands on and after the said date last mentioned became and were and are public lands of the United States, in this:

1st. Because the pleadings and exhibits thereto and the evidence show that the lands described were never at any time withdrawn by the Land Department of the United States, or other lawful authority, or affected by any act of the Northern Pacific Railroad Company, or withheld or withdrawn from sale, grant, or disposition by the United States on July 25, 1866, under said grant to the Oregon & California Railroad Co.

146 2nd. Because the pleadings and exhibits thereto and the evidence show that nothing was done by the Northern Pacific Railroad Company under said act of Congress of July 2nd, 1864, which in anywise affected any of the lands described in the bill of complaint.

3rd. Because the Northern Pacific Railroad Company under said act of Congress of July 2nd, 1864, had no power or authority to locate any line of its railroad by way of the Columbia River Valley to Puget Sound until after the joint resolution of Congress of May 31st, 1877, and because the pleadings and exhibits thereto and the evidence show that no map of any kind indicating any branch line under said act of July 2nd, 1864, was ever filed by the Northern Pacific Railroad Company, and because said Perham map does not indicate or designate the location of any branch line whatever, and because on Sept. 29th, 1890, all said lands described in the bill of complaint and in the patents therein mentioned had been theretofore and on July 25th, 1866, granted to the Oregon & California Railroad Company under said act of Congress of that date.

4th. Because the pleadings, exhibits thereto, and the evidence show that certain of the lands described in the bill of complaint, and in t

patents therein referred to, are within and comprise a part of the indemnity lands grant made by the said act of July 25th, 1866, to the appellant, the Oregon and California Railroad Company; and even if it were true that such lands were or could have been in anywise affected by the said act of July 2nd, 1864, or the said map, "Exhibit C," such effect was extinguished and removed by the said act of September 29th, 1890; and at all times after September 29th, 1890, even if not at any time prior thereto, the appellant, the Oregon and California Railroad Company, was fully entitled that patents issue conveying all of such lands to it.

V.

The court erred in decreeing and adjudging that the maps of August 13, 1870, or either of them, designated in said bill of complaint as "Exhibit K," filed by the Northern Pacific Railroad Company, operated upon or had any effect in relation to the lands described in the bill of complaint, or any patents mentioned therein, in this:

1st. Because the pleadings and exhibits thereto and the evidence show that said maps were maps of general route only, and made and filed as such only by the said Northern Pacific Railroad Company, and made and filed by the Northern Pacific Railroad Company in pursuance of and by virtue of the authority of a joint resolution of Congress, of date May 31, 1870, and not otherwise; and

2nd. Because the pleadings and exhibits thereto and the evidence show that said maps of August 13, 1870, were not maps of definite location, and the Northern Pacific Railroad Company never at any time filed any maps of definite location opposite to or coterminous with any of the lands described in the bill of complaint or within forty miles of any part thereof.

VI.

The said court erred in adjudging and decreeing that said Northern Pacific Railroad Company, under said act of Congress of July 2nd, 1864, was granted any lands over or upon its branch line by way of the Columbia River Valley to a point at or near Portland, in this:

1st. Because as matter of law there was no grant made, or intended to be made, to the Northern Pacific Railroad Company of any lands whatsoever for its said branch line.

VII.

The court erred in not decreeing and adjudging that the lands in suit were granted to the appellant, The Oregon & California Railroad Company, in this:

1st. Because the pleadings and exhibits thereto and the evidence show that the said lands described in the bill of complaint, and in the patents therein mentioned, were granted to the Oregon & California Railroad Company by the act of July 25th, 1866.

2nd. Because the pleadings and exhibits thereto and the evidence show that said lands were earned by said Oregon & California Railroad Company by the construction of its road under said act of July 25, 1866,

and that the constructed portion of said road was thereupon duly accepted by the President of the United States, as in performance of said grant, and the patents in said bill of complaint mentioned were thereupon duly issued to the said Oregon & California Railroad Company, and the said Oregon & California Railroad Company then and thereby became the owner in fee simple of the said premises and the whole thereof.

VIII.

The court erred in decreeing a cancellation of the patents issued,
149 described in the bill of complaint, conveying the lands mentioned therein to the Oregon & California Railroad Company, in this :

1st. Because the pleadings and exhibits thereto and the evidence show that each of said patents so duly and properly issued for lands granted to the said company by the act of July 25, 1866, and for which it was then duly entitled, were patents issued under said act aforesaid.

Wherefore the defendants and appellants pray that the decree herein appealed from be reversed and that the circuit court be directed to enter a decree dismissing the bill of complaint of the complainant.

(Sgd.)	BRONAUGH, McARTHUR, FENTON & BRONAUGH, <i>Solicitors for Appellants.</i>
(Sgd.)	E. C. BRONAUGH, L. L. McARTHUR, W. D. FENTON, E. C. BRONAUGH, Jr., <i>Of Counsel.</i>

DISTRICT OF OREGON, ss :

Due service of the within petition and assignment of errors is hereby accepted in Multnomah County, Oregon, this 30th day of December, 1895, by receiving a copy thereof, duly certified to as such by W. D. Fenton, one of attorneys for defendants.

DANIEL R. MURPHY,
United States Attorney.

(Endorsed :) Filed December 30th, 1895. J. A. Sladen, clerk.

150 And afterwards, to wit, on Monday, the 30th day of December, 1895, the same being the 71st judicial day of the regular October term of said court—present, the Honorable William B. Gilbert, United States circuit judge, presiding—the following proceedings were had in said case, to wit :

In the circuit court of the United States for the district of Washington.

THE UNITED STATES, COMPLAINANT,	}
<i>vs.</i>	
THE OREGON AND CALIFORNIA RAILROAD	
Company, John A. Hurlburt, and Thomas L. Evans, defendants.	

Order allowing appeal.

Now on this day come the Oregon & California Railroad Company and John A. Hurlburt and Thomas L. Evans, defendants, by W. B.

Fenton, one of their solicitors in the above-entitled suit, and in open court respectfully move and petition the court that the said Oregon & California Railroad Company, John A. Hurlburt, and Thomas L. Evans, and each of them, be allowed and granted an appeal to the United States circuit court of appeals for the ninth circuit from the decree of this court in this cause, made and entered at the present term of said court and on the 9th day of September, 1895, in favor of the United States,

complainant, and against the said defendants, adjudging and
151 decreeing that the patents described, in so far as they affect the lands in the bill of complaint described, be set aside, canceled, and annulled, and that said lands never were the property of either of said defendants or of said railroad company, but that the same are forfeited to the United States and become public lands of the United States by the provisions of the act of Congress of September 29th, 1890, entitled, "An act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads and other purposes," and decreeing that the deeds to said defendants John A. Hurlburt and Thomas L. Evans should be set aside, canceled, and held for naught, and decreeing and adjudging that said lands described and mentioned in the bill of complaint were not granted to the Oregon & California Railroad Company by act of Congress, of date July 25th, 1866, entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad in California to Portland in Oregon."

Whereupon it is ordered that said appeal be allowed as prayed, and that the said defendants be, and they are and each of them is hereby, allowed to appeal from said decree to the United States circuit court of appeals for the ninth circuit, and a citation issue and be served as by law provided, as prayed for in said petition, upon giving their bond with sureties, to be approved by the judge making this order, in the sum of one thousand dollars.

Dated December 30, 1895.

(Sgd.)

WM. B. GILBERT, *Judge*.

152 (Endorsed:) Filed Dec. 30, 1895. J. A. Sladen, clerk.

And afterwards, to wit, on the 30th day of December, 1895, there was duly filed in said court a bond on appeal, in words and figures as follows, to wit:

In the circuit court of the United States for the district of Oregon.

THE UNITED STATES, COMPLAINANT,

vs.

THE OREGON & CALIFORNIA RAILROAD COMPANY,

John A. Hurlburt, and Thomas L. Evans, defendants.

Bond on appeal.

Know all men by these presents that we, The Oregon & California Railroad Company, and John A. Hurlburt, Thomas Evans, principals, and R. Kohler and L. R. Fields, sureties, of Portland, Oregon, are held

and firmly bound unto the United States, complainant, in the sum of one thousand dollars, to be paid to the said United States, executors, or administrators. To which payments, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents.

Sealed with our seals and dated December 30th, 1895.

153 Whereas, the above-named Oregon and California Railroad Company, John A. Hurlburt, and Thomas L. Evans have been allowed an appeal to the United States circuit court of appeals for the ninth circuit to reverse the decree in the above-entitled cause by the circuit court of the United States for the district of Oregon, rendered September 9th, 1895:

Now, therefore, the condition of this obligation is such that if the above-named Oregon and California Railroad Company, John A. Hurlburt, and Thomas L. Evans shall prosecute said appeal to effect, and answer all costs and damages if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

THE OREGON & CALIFORNIA RAILROAD COMPANY.

(By R. KOEHLER, *Second Vice-President*.)

JNO. A. HURLBURT.

THOS. L. EVANS.

R. KOEHLER.

L. R. FIELDS.

Signed, sealed, and delivered in presence of W. D. Fenton.

UNITED STATES OF AMERICA, *District of Oregon*, ss:

I, R. Koehler, being duly sworn, depose and say that I am one of the sureties in the foregoing bond; that I am a resident and householder within said district, and that I am worth in property situated therein the sum of two thousand dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

R. KOEHLER.

154 Subscribed and sworn to before me the 30th December, 1895.

[SEAL.]

W. D. FENTON,

Notary Public for Oregon.

UNITED STATES OF AMERICA, *District of Oregon*, ss:

I, L. R. Fields, being duly sworn, depose and say that I am one of the sureties in the foregoing bond; that I am a resident and householder within said district, and that I am worth in property situated therein the sum of two thousand dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

L. R. FIELDS.

Subscribed and sworn to before me this 30th December, 1895.

[SEAL.]

W. D. FENTON,

Notary Public for Oregon.

(Endorsed:) Filed Dec. 30, 1895. J. A. Sladen, clerk. Approved December 30th, 1895. Wm. B. Gilbert, judge.

And afterwards, to wit, on the 30th day of December, 1895, there was duly filed in said court a stipulation in words and figures as follows, to wit:

155 In the circuit court of the United States for the district of Oregon.

THE UNITED STATES, COMPLAINANT,	}
<i>vs.</i>	
THE OREGON & CALIFORNIA RAILROAD	
Company, John A. Hurlburt, and Thomas	
L. Evans, defendants.	

Stipulation that certain original exhibits be forwarded to U. C. A.

The parties to this suit, acting by and through their respective solicitors in order to save expense, insure greater accuracy, and expedite the transmission of the record in this cause to the United States circuit court of appeals for the ninth circuit, upon appeal from the decree rendered by the above-entitled court in this cause on September 9th, 1895, hereby stipulate and agree that by consent and leave of the court each and all of the original maps, letters, papers, documents, writings, and exhibits introduced in evidence or referred to in the pleadings, together with the original testimony taken and returned by the special examiner in said

156 cause, may and shall be certified and sent up to the said appellate court by the clerk of this court to be used and read in this cause on the hearing of such appeal.

Dated.

(Signed.) DANIEL R. MURPHY,
District Attorney and Solicitor for Complainant.
 BRONAUGH, McARTHUR, FENTON & BRONAUGH,
Solicitors for Defendants.

(Endorsed:) Filed December 30, 1895. J. A. Shaden, clerk.

And afterwards, to wit, on Monday, the 30th day of December, 1895, the same being the 71st judicial day of the regular October term of said court—present, the Honorable William B. Gilbert, United States circuit judge, presiding—the following proceedings were had in said case, to wit:

In the circuit court of the United States for the district of Oregon.

THE UNITED STATES, COMPLAINANT,	}	December 30, 1895.
<i>vs.</i>		
THE OREGON & CALIFORNIA RAILROAD		
Company, John A. Hurlburt, and Thomas		
L. Evans, defendants.		

Order to forward original exhibits.

Now at this day come the parties to this suit, by their respective solicitors, and present their written stipulation on file herein, wherein it is stipulated and agreed that by consent and leave of the court each and all of the original maps, plats, letters, papers, documents, writings, and exhibits introduced in evidence, annexed to and

referred to in the pleadings, together with the evidence and exhibits returned into court by F. S. Lafferty, special examiner in this cause, may be certified and sent up to the United States circuit court of appeals for the ninth circuit, and it being apparent to this court that the said original maps, plats, letters, papers, documents, writings, and exhibits have been and were prepared in the General Land Office and certified therefrom, and are printed official documents of known verity:

It is therefore ordered and directed that the clerk of this court do certify and transmit to the said appellate court all said original maps, plats, letters, papers, documents, writings, exhibits, and evidence as a part of the record and transcript of this cause at the same time he transmits copies of the remainder of the records and transcript in this cause to the said appellate court.

(Sgd.)

GILBERT, *Judge*.

(Endorsed:) Filed December 30th, 1895. J. A. Sladen, clerk.

Clerk's certificate to transcript.

DISTRICT OF OREGON, ss:

I, J. A. Sladen, clerk of the United States circuit court for the district of Oregon, do hereby certify that the foregoing transcript of record on appeal in cause No. 1982, The United States vs. The Oregon and California Railroad Company, John A. Hurlburt, and Thomas L.

Evans, is a full, true, and correct transcript of said record as the same appears at my office and in my custody, except such original papers, documents, and exhibits as are transmitted to the appellate court by order of said circuit court.

I further certify that the cost of the foregoing transcript is one hundred twenty-one 60-100 dollars, and that the same has been paid by the defendants, The Oregon and California Railroad Company.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Portland, in said district, this 2nd day of January, 1896.

[SEAL.]

J. A. SLADEN,

Clerk United States Circuit Court, District of Oregon.

(Endorsed:) No. 275. United States circuit court of appeals for the ninth circuit. The Oregon and California Railroad Company, John A. Hurlburt, and Thomas L. Evans, appellants, vs. The United States. Transcript of record. Appeal from the circuit court of the United States for the district of Oregon. Filed January 8th, 1896. F. D. Monckton, clerk.

159 S. S. M.

Exhibit 1 to amendment to bill.

W. J. M.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., July 20, 1897.

I, S. W. Lamoreux, Commissioner of the General Land Office, do hereby certify that, as appears on a full and complete examination of the records and files of the General Land Office, no map of the definite location of the Northern Pacific Railroad, between Wallula, State of Wash-

ington, and Portland, State of Oregon, was ever filed in this office, nor was any withdrawal of "indemnity lands" ever made on account of said railroad between said points.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

S. W. LAMOREUX,
Commissioner of the General Land Office.

(Endorsed:) Filed Aug. 12, 1893. R. H. Lamson, clerk.

F. W. C.

Exhibit 2 to amendment to bill.

W. J. M.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 15th, 1893.

I, S. W. Lamoreux, Commissioner of the General Land Office,
160 do hereby certify that the annexed copies, viz, (1) letter from the Secretary of the Interior, dated August 13th, 1870; (2) letter addressed to the register and receiver at Oregon City, Oregon, dated Sept. 20, 1870; (3) letter from the Secretary of the Interior, dated October 27th, 1870; (4) letter addressed to the register and receiver at Oregon City, Oregon, dated Feb'y 14, 1872, are true and literal exemplifications of the originals on file, or of record, in this office; further, that the withdrawals ordered by these letters are the only withdrawals ordered upon that portion of the line of the Northern Pacific Railroad extending from Portland, Oregon, to Wallula, Washington.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

S. W. LAMOREUX,
Commissioner of General Land Office.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Augt. 13th, 1870.

SIR: I transmit herewith two maps showing the designated route of the Northern Pacific Railroad.

You will immediately direct the proper local land officers in the States of Wisconsin and Minnesota to withhold from sale, preemption, homestead, and other disposal the odd-numbered sections not sold, reserved, and to which prior rights have not attached, within twenty miles on each side of the route, and in like manner direct those officers in Washington

Territory to withhold such odd-numbered sections as lie south of
161 town of Steilacoom. The unsurveyed as well as surveyed lands will be included in the reservation, and you will direct the local officers to give notice accordingly; and as the township plats are received by them, they will make the proper notes of reservation thereon.

The withdrawal will take effect from the receipt of the order at the local office.

Very respectfully, your ob't servant,

J. D. Cox, *Secretary.*

Hon. Jos. S. Wilson,
Commr. of the Genl. Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Sept. 20th, 1870.

REGISTER & RECEIVER, *Oregon City, Oregon.*

GENTLEMEN: I transmit herewith a diagram showing the designated route of the Northern Pacific Railroad under act of July 2d, 1864, and, by direction of the Secretary of the Interior, you are directed to withhold from sale or location, preemption or homestead entry, all the odd-numbered sections of public lands falling within the limit of 20 miles, as designated on this map.

You will also increase in price to \$2.50 per acre the even-numbered sections within those limits, and dispose of them at that ratibility under the preemption and homestead laws only, no private entry of the same being admissible until these lands have been offered at the increased price.

162 This order will take effect from the date of its receipt by you, and you are requested to acknowledge without delay the time of its receipt.

Very respectfully,

Jos. S. WILSON, *Commissioner.*

(Receipt acknowledged Oct. 15, 1870. "I," 21, 859.)

DEPARTMENT OF THE INTERIOR,
Washington D. C., Oct. 27th, 1870.

SIR: In my letters of the 13th and 16th August last, a withdrawal of lands for twenty miles on each side of the route of the Northern Pacific Railroad, in Washington Territory, was ordered to be made. That withdrawal will be increased to forty miles on each side of the route, and you will issue instructions accordingly.

Very respectfully, your obt servant,

J. D. Cox, *Secretary.*

Hon. Jos. S. WILSON,

Commissioner of the General Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

February 14, 1872.

REGISTER AND RECEIVER, *Oregon City, Oregon.*

GENTLEMEN: I transmit herewith a diagram showing the forty-mile limits of the Northern Pacific Railroad in your district, authorized by the act of Congress of July 2d, 1864, and, by direction of the Secretary of the Interior, you are requested to withhold from sale or location, preemption or homestead entry, all the odd-numbered sections of public lands falling within said limits.

163 You will also increase in price to \$2.50 per acre the even-numbered sections within these limits, and dispose of them at that ratibility, and under the preemption and homestead laws only, no private entry of the same being admissible until these lands have been offered at the increase price.

This order will take effect from the date of its receipt by you, and you are requested to acknowledge without delay the time of its receipt.

Very respectfully,

WILLIS DRUMMOND,
Commissioner.

(Receipt ack. by register March 4, '72. Instructions rec'd on 2nd inst. at 4.30 o'clock. "I,"-86,622.)

(Endorsed:) No. 1982. N. P. R. R. Withdrawals & no def. loc. Filed Aug. 12, 1893. R. H. Lamson, clerk.

F. A. W.

Exhibit B.

A. M.

UNITED STATES OF AMERICA.

(Vignette.)

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Jan. 12, 1893.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original on file in this Department.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed the day and year first above written.

[SEAL.]

JOHN W. NOBLE,
Secretary of the Interior.

WASHINGTON, D. C., 6 March, 1865.

Hon. J. P. USHER, *Secretary of the Interior.*

SIR: Under authority from the board of directors of the Northern Pacific Railroad Company, I have designated on the accompanying map in red ink the general line of their railroad from a point on Lake Superior, in the State of Wisconsin, to a point on Puget Sound, in Washington Territory, via the Columbia River, adopted by said company as the line of said railroad, subject only to such variations as may be found necessary after more specific surveys, and I respectfully ask that the same may be filed in the office of the Commissioner of the General Land Office, together with a copy of the charter and organization of said company, and that under your directions the lands granted to said company may be marked and withdrawn from sale in conformity to law.

I am, respectfully, your ob't serv't,

JOSIAH PERHAM,
Pres't N. P. R. R. Company.

(Endorsed:) Exhibit B. Letter of Perham. Mch. 6, 1865. Filed Feb. 3, 1893. R. H. Lamson, clerk.

165 F.

Exhibit D.

M. J. D.
W. C. E.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., December 9, 1892.

I, William M. Stone, Commissioner of the General Land Office, do hereby certify that the annexed copy, dated March 9, 1865, and signed

J. P. Usher, Secretary, is a true and literal exemplification from the original paper on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

W. M. STONE,
Commissioner of General Land Office.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., March 9th, 1865.

(Address only the Commissioner of the General Land Office.)

SIR: Herewith I transmit a map upon which the "general line" of the Northern Pacific Railroad, as adopted by the board of directors of that railroad company, is delineated; also a copy of the letter of the president of said company, dated the sixth instant, requesting that the granted lands along said line be withdrawn from market.

In view of the provisions of the 3d and 6th sections of the act of Congress, approved July 2, 1864 (Pamphlet Laws, 368, 369), should you perceive no objection, I think that the odd-numbered sections along the line for ten miles in width on each side in Minnesota and Wisconsin, and for twenty miles in width on each side along that part of the line extending through the Territories westward to Puget Sound, may be withdrawn as requested, as preliminary to the final survey and location of said railroad.

The even-numbered sections along the line will, however, be subject to disposal by the United States, as provided in the 6th section of said act of Congress.

Very respectfully, your ob't servant,

J. P. USHER, *Secretary.*

THE COMMISSIONER OF THE GENERAL LAND OFFICE.

(Endorsed:) G. 51416. Hon. Sec'y of Interior, March 9, 1865. Encloses a map upon which the "general line" of the Northern Pacific R. R. is delineated and directs the withdrawal of land from market. Exhibit D. Letter of Sec'y transmitting Perham map. Filed Feb. 3, 1893. R. H. Lamson, clerk.

F. A. W.

Exhibit E.

A. M.

P. M. S.

UNITED STATES OF AMERICA.

J. T. S.

(Vignette.)

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Dec. 9, 1892.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original on file in this Department and of the endorsement thereon.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed the day and year first above written.

[SEAL.]

JOHN W. NOBLE,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

June 22nd, 1865.

HON. JAS. HARLAN,

Secretary of the Interior.

SIR: The late Secretary of the Interior, under date of the 9th March last, enclosed to this office a diagram showing the proposed route of the Northern Pacific Railroad, for which a grant of lands was made by the act approved July 2nd, 1864 (Stats. at Large, pamphlet laws 1864, p. 365). This diagram was filed in the Secretary's office, accompanied by a request for withdrawal of lands.

As no withdrawal was ordered by the late Secretary, no action was here taken upon the application.

Mr. Perham, the president of the railroad company, has called attention to the matter, and in submitting it I have the honor to state:

1st. That the present application deals with the railroad system of granting on the largest scale known to Congressional legislation.

It extends from Lake Superior to the Pacific Ocean, and, allowing for probable deflections, may be set down at 2,025 miles in length; taking in alternate sections, by estimate, 47,360,900 acres, in a belt of 40 miles wide through the Territories and twenty miles wide through the States, the general or conjectural course being indicated on the map herewith.

By the opinions of Attorney-General Cushing of 19th Decr., 1856, and 16th February, 1857 (Opinions of Attorneys-General, Vol. VIII, pp. 294 and 390, and the action of the Department), railroad grants take effect from the date when the survey of the route is actually made on the face of the earth.

The evidence required of the route under the established ruling of the Department is a connected map showing the exact location, the map indicating by flag-staffs the progress of the survey; the map to be authenticated by the affidavit of the engineer, with the approval of the accredited chief officer of the grantee. That proof is required to show the precise portions of each section or smallest legal subdivisions cut by the route.

In the judgment of the Commissioner no withdrawal should be ordered until such map is filed in the General Land Office; and although in the Attorney-General's opinion (Mr. Cushing) the right takes hold from the date of the actual survey on the ground, yet upon that point this office, with deference to superior legal authority, holds that the grant does not become effective until the map is actually filed in the district land office, where citizens resort to ascertain what is public land and what is not, so that purchases can be made without danger of conflicting title. Yet, even admitting that the right in the railroad grant attaches from the date of such survey, we are without the means of ascertaining and determining the interest of rightful claimants until such map is filed. Now, in this view the Commissioner reports that no withdrawals should be ordered until the map of actual survey, authenticated as indicated, shall be filed in the district and General Land Office.

This may be done starting from the cul de sac of Lake Superior, the eastern initial point of the route, and stretching thence westwardly to the western boundary of Minnesota, the lines of the public surveys having been that far established.

2nd. The same course of proceeding to be had in regard to that portion of the road falling on the western or Pacific side within the range of existing public surveys; but

3d. Of course, no withdrawal can now be made on account of the road in the region of country extending across that part of the continent between the west boundary of Minnesota to the eastern surveys of Washington Territory, because over that territory the lines of the public surveys have not yet been established.

In this extended locality the withdrawal should only be ordered as the public surveys are advanced and survey of railroad established, in like manner as indicated under first head.

4th. A general withdrawal upon conjectural or uncertain bases might result in shutting out from settlement large bodies of land which an actual survey would show not within the grant, whilst lands would be omitted from the withdrawals which the survey might require to be included.

170 Then, it is not sound policy nor is there any warrant in our land legislation for doing any act the tendency of which would give preference to satisfy a grant on such a stupendous scale as this, whilst individual claims under our general system of land laws, homestead, preemption, and sales would be unaided by any such preliminary discriminating proceeding.

The result of a premature withdrawal on uncertain basis would be unjust to the pioneer settler, detrimental to the public interests in arresting the progress of settlement and disposal in that direction of the public domain, and to that extent checking the growth and prosperity of our frontier, and that, too, in the vicinity of a colonial dependence of a powerful nation; would be a prejudice to the interests of the railroad grant itself in excluding settlers and immigrants, whose labor and means would enhance the value of such lands as in the ordinary progressive operations of the land system would in due time fall to the grant.

The land system should be so administered that all the different acts of land legislation may be at the same time in full operation, giving precedence to no one law over another, unless where the term of the law indicate the public will to be otherwise, leaving corporate or other grantees and individuals respectively to have the benefit of their superior diligence in establishing and completing their several claims according to law.

For these considerations this office declines ordering a withdrawal until authenticated maps of the actual survey of the several portions of the route shall be successively filed from time to time to completion, showing the connections of said portions with the lines of the
171 public surveys, yet respectfully submits the foregoing considerations for such directions as the Secretary may be pleased to give in the premises for the government of this office.

With great respect, your obt. svt.,

JOS. S. WILSON, *Acting Commissioner.*

(Endorsement:) R ³⁷/₃₇ Northern Pacific. Dept. of Interior, Com. Gen. Land Office, June 22, 1865. Rec'd June 23, 1865. Submitting a diagram showing the proposed route of the Northern Pacific R. Road, etc.

* Sec'y sustains Commr's refusal.

* Thompson.

* Matter starred appears in lead pencil in original.

Department of the Interior. June 23, 1865. One 533. Exhibit E. Commr. to Secy., adverse to Perham map Filed Feb. 3, 1892. R. H. Lamson, clerk.

F. A. W.

Exhibit G.

A. M.

UNITED STATES OF AMERICA.

(Vignette.)

DEPARTMENT OF THE INTERIOR,

Washington, D. C., Jan. 12, 1892.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original on file in this Department.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed the day and year first above written.

[SEAL.]

JOHN W. NOBLE,
Secretary of the Interior.

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WASHINGTON, D. C., *Feb. 17th. 1870.*

JAY COOKE, Esq.

MY DEAR SIR: I regret exceedingly that I am unable to remain over to see Secy. Cox with you to-morrow, but my engagements are imperative and I must leave for N. Y. in the morning. I hope you will not fail to impress upon the Sec'y the great importance of protecting the Northern Pacific R. R. Co. in the matter of their lands while the surveys are being made. It is well known to myself, and I have it upon the most undoubted authority, that organized bands of speculators are working in advance of our surveying parties, entering and taking up the most valuable of our lands, and thus depriving us of the only means left us for building our road.

To prevent this wholesale plunder, it has occurred to me that the Dept. of the Interior should protect us by withdrawing from public entry, except in cases of actual settlers under the homestead act, all the lands in Minnesota north of the parallel, say, of St. Cloud, about 47 or 46½, say, for a period of ninety days. This would enable us to complete our surveys and file our map in the Dept. It certainly is for the interest of the Govt. that this road should be built, and as Congress declines to give us a subsidy and we are left to our lands as our only resource, if we are not protected in these, especially as against avowed speculators, we have nothing left, and must necessarily abandon the enterprise entirely.

Whether any precedent exists for the method we propose, I do not know; but the manifest equity of our request I am sure none can deny.

Nor can any injury result to any legitimate interest. As to an honest and actual settler under the homestead we do not seek to interpose any obstacle, but we do think we have a right to ask protection as against parties whose only object is to plunder us.

I hope the Secretary may see the importance of our request and discover some method to give us relief.

I am, very sincerely, your friend,

J. GREGORY SMITH,
Presd. Nor. Pacific R. R. Co.

(Endorsed:) Exhibit G. Letter of J. Gregory Smith, Feby. 18/70, referring to speculators, etc. Filed Feb. 3, 1892. R. H. Lamson, clerk.

E. A. W.

Exhibit H.

A. M.

UNITED STATES OF AMERICA.

(Vignette.)

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Jan. 12, 1893.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original of record in this Department.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed the day and year first above written.

[SEAL.]

JOHN W. NOBLE,
Secretary of the Interior.

174

DEPARTMENT OF THE INTERIOR,
Washington, D. C., February 21st, 1870.

HENRY D. COOKE.

SIR: I have received your letter of the 18th inst., inclosing one from J. Gregory Smith, president Northern Pacific Railroad Company, stating that speculators are working in advance of said company's engineers and entering the most valuable of their lands, and asking if the Department cannot protect the company by withdrawing lands north of the parallel of Saint Cloud for ninety days.

In reply, I have to state that upon a map being filed showing the designated route of the Northern Pacific Railroad from the point on Lake Superior fixed upon as the "beginning of the road" to the western boundary of Minnesota an order will be issued to the Commissioner of the General Land Office to withdraw temporarily the odd sections not sold, reserved, &c., for twenty miles on each side thereof.

The company's surveys must have progressed so far that a route can be designated which will vary but little from what it will be when definitely located. Such a withdrawal will prevent the granted sections being entered and will accomplish the object Mr. Smith has in view. This is all the Department can do under the circumstances.

Very respectfully, your obt servant,

J. D. Cox, *Secretary.*HENRY D. COOKE, Esq., *Washington, D. C.*

175 (Endorsed:) Exhibit H. Letter of Sec'y Cox, Feby. 21, '70.
Reply to H. D. Cooke. Filed Feb. 3, 1893. R. H. Lamson,
clerk.

F. A. W.

Exhibit J.

A. M.

UNITED STATES OF AMERICA.

(Vignette.)

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Jan. 12, 1893.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original on file in this Department.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed the day and year first above written.

[SEAL.]

JOHN W. NOBLE,
Secretary of the Interior.

STATE OF NEW YORK,
County of New York, ss:

NEW YORK CITY, *July 26th, 1870.*

Edwin T. Johnson, of the city, county, and State of New York, deposes and says that he is the engineer in chief of the Northern Pacific Railroad Company, and that he has been such engineer in chief since June, A. D. 1866.

That during the period above named, surveys and explorations have been made at various places on the proposed route for said road, for determining its proper location, and that in connection with said surveys examinations have been made and information has been collected relative to other portions of said route sufficient to enable the said company to determine approximately and by reference to appropriate landmarks the proper position for the line of their said road on those portions, with a view to the withdrawal from market or from settlement of the lands granted to the said company on either side of their said road.

The portions of the line of the Northern Pacific Railroad, the proper location of which have thus been ascertained, extend, the first portion, from Lake Superior, in the State of Wisconsin, to the Columbia River, in the Territory of Washington—a distance, as estimated, of fifteen hundred and ten miles (1,510).

This portion is more particularly described as follows, viz:

Commencing in the State of Wisconsin, at the mouth of the Montreal River, the western boundary of upper Michigan; thence on a direct course south of west to the northwest corner of township forty-six (46), range four (4) west, in said Wisconsin, a distance of about twenty-five miles;

Thence in a direct course north of west to a point in the west line of township forty-eight (48), range sixteen (16) west, in Minnesota, one and one-half miles south of the northwest corner of said township, a distance of about sixty-eight (68) miles;

Thence on a direct and nearly west course through Carlton, Cass, Wadena, and Ottertail counties to the northwest corner of township one hundred and thirty-six (136), range thirty-eight (38) west, a distance of about one hundred and fifty miles.

Thence northwestwardly on a direct course through Ottertail, Becker, Clay, and Polk counties to a point on the east or right bank of the Red River, in the middle line of township one hundred and forty-two (142), range forty-eight (48) west, a distance of about sixty-nine miles.

Thence northwestwardly across the said river into the Territory of Dakota on a direct course to Fort Totten on Lake Miniwaken or Devils Lake in said Dakota, a distance of about one hundred and twenty miles.

Thence in a direction a little to the south of west on a direct line to the isolated butte or mound known as the Maison du Chien, in said Dakota, a distance of about ninety miles.

Thence southwestwardly on a direct course across the Missouri River to a point on the west or left bank of the Yellowstone River in Montana, situated fifty-two miles in a direct line southerly from Fort Union on the Missouri River, a distance of about one hundred and seventy-one miles.

Thence southwestwardly on a direct course to a point on the west or left bank of the Bighorn River, opposite to the mouth of Tullocks or Muddy Creek, about seven miles from the Yellowstone River, an estimated distance of one hundred and sixty-six miles.

Thence on a direct course southwestwardly to the mouth of Clarks Fork, a branch of the Yellowstone River in said Montana, a distance of about seventy-four miles.

178 Thence following up the valley of the Yellowstone River, on its south side, and parallel nearly with its general course, to a point on its east or right bank, opposite the mouth of Shields or Twenty-five Mile River, a distance of about ninety-five miles.

Thence up the Yellowstone River on its right or east bank, crossing it and entering a valley leading from it to the pass known as Bozemens Pass, on nearly a direct course to Fort Ellis, a distance of about twenty-two miles.

Thence on a direct course westwardly across the Gallatin and Madison rivers to the mouth of Boulder Creek, of the Jefferson branch of the Missouri River, a distance of about forty miles. Thence following up the valley of the *valley of the* Jefferson River southwestwardly and parallel nearly with the general course of said river, to the mouth of the Wisdom River, a distance, as estimated, of sixty miles. Thence due west across the main divide of the Missouri and Columbia waters on a direct course to the mouth of the Beaver Creek, a branch of the Salmon River, near the great bend of the latter in the Territory of Idaho, a distance, as estimated, of ninety miles. Thence following down the Salmon River in said Idaho, keeping near to it to a point on its north bank twenty miles from its mouth, a distance, as estimated, at one hundred and thirty miles. Thence in a northwestwardly direction on a direct course to a point on the east or right bank of the Lewis and Saptin River, ten miles north of the point where the boundary line of Washington Territory and Oregon meets that river, a distance, as estimated, of fifty miles.

179 Thence on a direct course a little to the south of west, crossing the Lewis or Saptin River into Washington Territory, to a point on the right or northwesterly bank of the Columbia River, opposite to the mouth of the Walla Walla River, a distance, as estimated, of ninety miles.

Making altogether on this portion a distance of fifteen hundred and ten (*twenty) miles, more or less, from the point of commencement on Lake Superior, in Wisconsin, to the Columbia River, at the mouth of the Walla Walla River, in Washington Territory.

Another portion of the line of the Northern Pacific Railroad, the proper location of which has been ascertained as above, is situated in Washington Territory, and extends from the international boundary of forty-nine degrees of north latitude southerly along the easterly side of Puget Sound, or of the chain of inland tide waters connected with the straight of Juan de Fuca to their southern extremity; thence southerly to the Columbia

* Correction in lead pencil in original.

River and along the eastern and northerly or right bank of that river to a point opposite to the mouth of the Walla Walla River, in said Territory.

This portion is more particularly described as follows, viz:

Commencing at the point where said international boundary of forty-nine degrees of north latitude first meets in its course west the tide waters of the Pacific Ocean.

180 Thence southeastwardly by the most direct course to the town of Whatcom, on Bellingham Bay, in said Territory, a distance of about twenty miles.

Thence southeastwardly on a direct course to the middle point of township number thirty-seven (37), range three (3) east, of the Willamette meridian, a distance of about six miles.

Thence southeastwardly on a direct course to the middle point of township No. (30) thirty, range five (5) east, of the Willamette meridian, a distance of about forty-four miles.

Thence southwestwardly on a direct course to the middle point of township twenty-seven (27), range four (4) east, of the Willamette meridian, a distance of about twenty miles.

Thence due south on a direct course to the middle point of township twenty-one (21), range four (4) east, of the Willamette meridian, a distance of thirty-six miles.

Thence southwestwardly on a direct course to the southwest corner of township seventeen (17), range two (2), west of the Willamette meridian, a distance of about forty-two miles.

Thence on a direct course a little east of south to the middle point of the west line of township seven (7), range one (1), west of the Willamette meridian, on or near the east or right bank of the Columbia River, a distance of about fifty-two miles.

Thence following the east or right bank of said river, or near the line of high-water mark of the same, southerly to the sight of Fort Vancouver, and thence across said river to Portland, Oregon, and back to Fort Vancouver, a distance of about thirty-three miles to Portland.

181 Thence from Fort Vancouver following the right or northerly bank of the said Columbia River, on or near the line of high-water mark of the same, eastwardly through the Cascade range of highlands to a point opposite the mouth of the Walla Walla River, a distance of one hundred and ninety miles, more or less; making an estimated distance altogether on this portion of the route of four hundred and forty-three miles, and for the aggregate of the two portions, as described above, a distance of nineteen hundred and fifty-(^{sixty})three miles, more or less.

These two portions of the Northern Pacific Railroad, above described, are fully exhibited on the two maps, respectively, hereto appended, and signed by the undersigned of even date with this certificate.

EDWIN F. JOHNSON,

Eng. in Chief, N. Pacific R. R. Comp'y.

Sworn and subscribed to this twenty-sixth day of July, A. D. 1870, before me,

[SEAL.]

W. N. GODDARD,

Notary Public, Co. of N. Y.

* Correction in lead pencil in original.

It is hereby certified that in pursuance of the act of Congress approved July 2, 1864, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific Coast, by the northern route," and the several acts amendatory thereto, certain portions of the line or route for said road were so far definitely fixed by resolution of the board of directors of said

182 company on the eighth day of July, A. D. 1870, as to make it the duty of the president of the said company to request the honorable the Secretary of the Interior to withdraw or withhold from sale and settlement the public lands to which said company are entitled on either side of the lands of their road so described as aforesaid in the certificate of their engineer in chief.

They therefore respectfully ask that their interests may be protected so far as they can be by a withdrawal of lands, as above set forth.

Such protection, it is believed, is in strict accordance with the intention of Congress in granting lands to the company for the construction of their road, and will save the company from a serious loss or diminution in the value of the grant consequent upon the delay necessary in making the surveys for filing a location in the usual form.

In testimony whereof the Northern Pacific Railroad Company has caused the same to be signed by its president and has attached hereunto its corporate seal at the city of New York this twenty-sixth day of July, A. D. 1870.

[SEAL.]

J. GREGORY SMITH,
President Nor. Pacific R. R. Co.

SAM'L WILKESON, *Secretary.*

(Endorsed:) Exhibit J. Certificate of officers of N. P. R. R. Co., with map of general route. Ex. A. Filed Feb. 3, 1893. R. H. Lamson, clerk.

183 F. A. W.

Exhibit K.

A. M.

UNITED STATES OF AMERICA.

(Vignette.)

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Jan. 12, 1894.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original of record in this Department.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed the day and year first above written.

[SEAL.]

JOHN W. NOBLE,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., August 13th, 1870.

J. G. SMITH.

SIR: I received from Edwin F. Johnson, esq., engineer in chief, on the 4th instant, two maps showing the general route of the Northern

Pacific Railroad, commencing at the mouth of the Montreal River, in Wisconsin, and terminating at the international boundary line on Simiah-moo Bay, in Washington Territory.

The line in said Territory skirts along the entire eastern shore of the waters of Puget Sound. The line as thus run passes many places where deep water is found, and no necessity for terminating it on the boundary line can be perceived. The grant is "to some point on

184 Puget Sound," and does not, as I conceive, recognize any right in the company to cover and control all the waters connected therewith. I have therefore directed the Commissioner to withdraw the odd-numbered sections within 20 miles on each side of the route in Wisconsin and Minnesota, and in Washington Territory only to withdraw such sections south of the town of Steilacoom.

It is noticed that the route passes through several diminished permanent Indian reservations. I do not recognize the right of the company to locate or construct their road through such reservations where the road can as well be constructed outside of them. They are intended for the homes of the Indians, and can only be encroached upon in case of absolute necessity from the topographical nature of the country. Upon a proper showing of such a state of fact, the Department will authorize the company to negotiate with the Indians for a right of way.

Very respectfully, your ob't servant,

J. D. Cox, *Secretary.*

J. GREGORY SMITH, Esq.,

Pres't. Northern Pac. R. R. Co., 120 Broadway, New York.

(Endorsed :) Exhibit K. Letter of Secy. to J. G. Smith, Aug. 13, '70. Withdrawal under two maps N. P., general route. Exhibit A. Filed Feb. 3, 1893. R. H. Lamson, clerk.

185 *Exhibit M—Patent No. 1.*

T. C.
W. C. E.

(Copy.)

OREGON AND CALIFORNIA RAILROAD LANDS.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., November 23, 1892.

I, W. M. Stone, Commissioner of the General Land Office, do hereby certify that the annexed copy of patent number one of lands issued May 9, 1871, to the Oregon and California Railroad Company, under the act of July 25, 1866, covering 32,517.21 acres, is a true and literal exemplification of the original as recorded in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

W. M. STONE,

Commissioner of General Land Office.

THE UNITED STATES OF AMERICA.

B. M. P.
M. B. H.

To all to whom these presents shall come, greeting :

Whereas, by the acts of Congress approved July 25th, 1866, and June 25th, 1868, "to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon,"

authority is given to the Oregon and California Railroad Company, 186 of Oregon, a corporation existing under the laws of the State, "to construct a railroad and telegraph line," under certain conditions and stipulations, as expressed in said acts; and provision is made for granting to the said company "every alternate section of public land designated by odd numbers to the amount of ten alternate sections per mile on each side of the said railroad on the line thereof, and within the limits of twenty miles on each side of said road," not sold, reserved, or otherwise disposed of by the United States, and to which a preemption or homestead claim may not have attached at the time the line of said road is definitely fixed.

And whereas an official statement bearing date January 31st, 1870, from the Secretary of the Interior, has been filed in the General Land Office, showing that the commissioners appointed by the President under provisions of the fourth section of the aforesaid act have reported to him that the first section of twenty miles of the road and telegraph line, "commencing at East Portland, in the county of Multnomah, Oregon, and terminating near Parrotts Creek, on the right or east bank of the Willamette River, in the county of Clackamas, in said State," has been constructed and fully completed and equipped in the manner prescribed by the acts relative thereto, and the president of the Oregon and California Railroad Company, of Oregon, has applied for a conveyance of the title to the lands granted to said company by the acts of Congress of July 25, 1866, and June 25, 1868.

And whereas certain tracts have been selected under the acts aforesaid by J. R. Moores, the agent of the Oregon and California Rail- 187 way Company, as shown by his original list of selections, dated

July 12th, 1870, and certified under date of July 28, 1870, by the register and receiver at Oregon City, Oregon, the said tracts being described as follows, to wit :

SOUTH OF BASE LINE AND EAST OF WILLAMETTE MERIDIAN.

Township two, range one.

Lot number two of section three, containing sixteen acres and seventy-nine hundredths of an acre.

Lots numbered one and eight of section nine, containing twenty-one acres and ninety-two hundredths of an acre.

Lots numbered one, two, and four of section twenty-nine, containing ninety-eight acres and eighty-six hundredths of an acre.

Township three, range one.

East half of southeast quarter of section five, containing eighty acres.

Lots numbered one, seven, eight, and nine of section fifteen, containing ninety-six acres and forty-five hundredths of an acre.

Southwest quarter of northeast quarter of section seventeen, containing forty acres.

Township one, range two.

Lot number two of section eleven, containing thirty-seven acres and sixty-six hundredths of an acre. Northeast quarter of northeast quarter of section fifteen, containing forty acres. Lots numbered one, two, three, four, and south half of section twenty-three, containing three hundred and seventy-nine acres and sixty-nine hundredths of an acre. Southeast quarter of southeast quarter and west half of southwest quarter of section twenty-seven, containing one hundred and twenty acres. Southeast quarter of northeast quarter and lots numbered one, two, and four of section twenty-nine, containing one hundred and thirty-six acres and thirty hundredths of an acre. Lots numbered three and four of section thirty-five, containing five acres and sixty hundredths of an acre.

Township two, range two.

Lots numbered four and seven of section thirteen, containing thirteen acres and sixteen hundredths of an acre. Southwest quarter of northwest quarter and southwest quarter of section twenty-three, containing two hundred acres. West half of northeast quarter, northwest quarter, northwest quarter of southeast quarter, and north half of southwest quarter of section thirty-five, containing three hundred and sixty acres.

Township three, range two.

West half of northwest quarter, west half of southwest quarter, and east half of southeast quarter of section one, containing two hundred and thirty-eight acres and fifty-two hundredths of an acre. Lots numbered one and two of section three, containing fourteen acres and fifty-five hundredths of an acre. East half of section, southeast quarter of northwest quarter, east half of southwest quarter, southwest quarter of southwest quarter, and lots numbered one, two, and three of section eleven, containing five hundred and sixty-eight acres and seven hundredths of an acre. East half of section thirteen, containing three hundred and twenty acres. South half of southeast quarter and lots numbered one, two, three, four, and five of section seventeen, containing one hundred and sixty-eight acres and eight hundredths of an acre.

Township one, range three.

Southwest quarter of northeast quarter, northwest quarter, and lot numbered two of section five, containing two hundred and five acres and ninety-two hundredths of an acre. North half of northeast quarter of section seven, containing eighty acres. West half of northwest quarter of section fifteen, containing eighty acres. Lots numbered three, four, and five of section seventeen, containing twenty-one acres and forty-five hundredths of an acre. Lots numbered seven and eight of section nineteen, containing eight acres and fourteen hundredths of an acre. East

half of northeast quarter, east half of southeast quarter, southwest quarter of southwest quarter, and lot number two of section twenty-one, containing two hundred and twenty-two acres and forty hundredths of an acre. South half of southwest quarter of section twenty-three, containing eighty acres. East half of southeast quarter, east half of northwest quarter, southwest quarter of northwest quarter, southwest quarter, and lot number one of section twenty-five, containing three hundred and eighty-four acres and seventy-six hundredths of an acre. Northwest quarter of section twenty-seven, containing one hundred and sixty acres. Northeast quarter, north half of southeast quarter, and lots numbered one, two, three, and four of section twenty-nine, containing three hundred and eleven acres and sixty-nine hundredths of an acre. Northwest quarter of section thirty-one, containing one hundred and seventy-two acres and ninety hundredths of an acre. Northeast quarter of northeast quarter, west half of northeast quarter, and northwest quarter of section thirty-three, containing two hundred and eighty acres. Northeast quarter, east half of northwest quarter, north half of southeast quarter, and north half of southwest quarter of section thirty-five, containing four hundred acres.

Township two, range three.

Northeast quarter and east half of southeast quarter of section one, containing two hundred and forty acres and fifty hundredths of an acre. East half of northeast quarter, southeast quarter, and east half of southwest quarter of section eleven, containing three hundred and twenty acres. North half of southeast quarter and northeast quarter of southwest quarter of section thirteen, containing one hundred and twenty acres. Southeast quarter of northeast quarter and northeast quarter of southeast quarter of section seventeen, containing eighty acres. Lot number two of section twenty-one, containing forty-seven acres and sixty hundredths of an acre. Lots numbered three, four, five, six, and eight of section twenty-three, containing twenty-six acres and twenty-eight hundredths of an acre. Lot number five of section twenty-five, containing thirty-one acres and ninety-eight hundredths of an acre. 191 Lot number four of section twenty-nine, containing twenty-three acres and ten hundredths of an acre. West half of northwest quarter and lots numbered three, four, five, six, and seven of section thirty-one, containing two hundred and twenty-seven acres and fifty-eight hundredths of an acre. Lots numbered three, four, five, and south half of southeast quarter of section thirty-five, containing one hundred and forty-four acres and five hundredths of an acre.

Township three, range three.

Lots numbered three, four, five, six, seven, eight, and eleven of section one, containing one hundred and sixty-five acres and fifty-one hundredths of an acre. Lots numbered one, two, and three of section three, containing thirty-two acres and eighty-eight hundredths of an acre. North half of northeast quarter, southeast quarter of southwest quarter, and lots numbered one, two, and three of section five, containing one

hundred and forty-seven acres and twenty-eight hundredths of an acre. West half of northeast quarter, west half of southeast quarter, southwest quarter, and lots numbered one, two, three, and four of section seven, containing four hundred and two acres and two hundredths of an acre. Northwest quarter, southeast quarter, and lots numbered one, two, and three of section nine, containing three hundred and ninety-nine acres and sixty-three hundredths of an acre. Lots numbered two, three, five, seven, ten, and northwest quarter of southeast quarter of section thirteen, containing two hundred and thirty-three acres and ninety-four hundredths of an acre. Lots numbered one, two, three, six, seven, 192 and eight of section fifteen, containing seventy-five acres and twenty-seven hundredths of an acre. Lot number one and southwest quarter of northwest quarter of section seventeen, containing seventy-eight acres and thirty-six hundredths of an acre.

Township one, range four.

Southwest fractional quarter of section seven, containing one hundred and sixty acres and twenty hundredths of an acre. Northeast quarter of section seventeen, containing one hundred and sixty acres. Southwest quarter of section twenty-three, containing one hundred and sixty acres. All of section twenty-five, containing six hundred and forty acres.

Township two, range four.

Northeast quarter and west half of section one, containing four hundred and seventy-six acres and ninety-eight hundredths of an acre. East half of northeast quarter and southeast quarter of section seven, containing two hundred and forty acres. All of section nine, containing six hundred and forty acres. All of section eleven, containing six hundred and forty acres. North half of northeast quarter, north half of northwest quarter, southwest quarter of northwest quarter, northwest quarter of southwest quarter, and southeast quarter of section thirteen, containing four hundred acres. All of section fifteen, containing six hundred and forty acres. North half of section seventeen, containing three hundred and twenty acres. North half of northeast quarter, southeast quarter of northeast quarter, and lots numbered one, two, and four of section nineteen, containing one hundred and eighty-five acres and three hundredths of an acre. Northeast quarter of northeast quarter and southwest quarter of section twenty-one, containing two hundred acres. North half of northeast quarter, south half of southeast quarter, northeast quarter of northwest quarter, west half of northwest quarter, and south half of southwest quarter of section twenty-three, containing three hundred and sixty acres. All of section twenty-five, containing six hundred and forty acres. South half of northeast quarter, south half of northwest quarter, and south half of section twenty-seven, containing four hundred and eighty acres. East half of northeast quarter, southwest quarter of northeast quarter, and southeast quarter of southeast quarter of section thirty-three, containing one hundred and sixty acres. All of section thirty-five, containing six hundred and forty acres.

Township three, range four.

All of section one, containing six hundred and forty-three acres, and sixty-eight hundredths of an acre. Southeast quarter of southwest quarter of section three, containing forty acres. Lots numbered two and three of section five, containing forty-one acres and fourteen hundredths of an acre. Lots numbered one and two of section nine, containing eighty-two acres and twenty hundredths of an acre. All of section eleven, containing six hundred and forty acres. All of section thirteen, containing six hundred and forty acres.

194 Township two, range five.

Southwest quarter of northeast quarter, south half of northwest quarter, and lots numbered one, two, three, and five of section seven, containing two hundred and forty acres, and eighty-seven hundredths of an acre. North half of section nine, containing three hundred and twenty acres. Northeast quarter, northwest quarter of northwest quarter, and south half of southwest quarter of section seventeen, containing two hundred and eighty acres. Northeast quarter, west half of southeast quarter, and west half of section nineteen, containing five hundred and forty-eight acres and six hundredths of an acre. Southwest quarter of northwest quarter and south half of section twenty-one, containing three hundred and sixty acres. North half of section, southwest quarter and east half of southwest quarter of section twenty-nine, containing five hundred and sixty acres. All of section thirty-one, containing six hundred and twenty-six acres and eighty-two hundredths of an acre. All of section thirty-three, containing six hundred and forty acres.

Township three, range five.

Southwest fractional quarter of section seven, containing one hundred and fifty-seven acres. All of section seventeen, containing six hundred and forty acres.

SOUTH OF BASE LINE AND WEST OF WILLAMETTE MERIDIAN.

Township one, range one.

195 Lot number five of section five, containing twenty-two acres and fifty hundredths of an acre. Lot number four and southwest quarter of southwest quarter of section nineteen, containing sixty-two acres and twenty-eight hundredths of an acre. East half of section, and northwest fractional quarter of section thirty-one, containing four hundred and eighty-six acres and eighty hundredths of an acre. Lot number four of section thirty-five, containing eight acres and ninety-six hundredths of an acre.

Township two, range one.

Lot numbered one and two of section three, containing forty acres. South half of northeast quarter and southeast quarter of section five, containing two hundred and forty acres. Northeast quarter of northeast

quarter, northwest quarter of southeast quarter, and northeast quarter of southwest quarter of section seven, containing one hundred and twenty acres. North half of southeast quarter of section thirteen, containing eighty acres. Southwest quarter of northwest quarter, south half of southeast quarter, and southeast quarter of southwest quarter of section twenty-five, containing one hundred and sixty acres. Southwest quarter of southwest quarter of section twenty-seven, containing forty acres. Northeast quarter, northeast quarter of northwest quarter, southwest quarter of northwest quarter, and east half of southeast quarter of section thirty-three, containing three hundred and twenty acres.

Township three, range one.

Northwest quarter of northwest quarter, southeast quarter of southwest quarter, and lot one of section one, containing eighty-eight acres and fourteen hundredths of an acre. Northeast fractional quarter of northwest quarter of section three, containing forty acres and fifty-nine hundredths of an acre. North fractional half of northeast quarter and north fractional half of northwest quarter of section seven, containing one hundred and sixty-seven acres and eighteen hundredths of an acre. Northeast quarter of southwest quarter of section seventeen, containing forty acres.

Township one, range two.

Lots numbered six and eight of section seventeen, containing thirty-eight acres and fifty hundredths of an acre. East half of section twenty-five, containing three hundred and twenty acres. Lots numbered three, four, and northwest quarter of northeast quarter of section twenty-seven, containing one hundred and seven acres and seven hundredths of an acre. Lots numbered one, five, and eight of section thirty-one, containing fifty-two acres and thirty-one hundredths of an acre. Lots numbered three and four of section thirty-three, containing fifty-five acres and sixty-six hundredths of an acre.

Township two, range two.

Lot number four, and northeast quarter of southwest quarter of section one, containing fifty acres and seventy hundredths of an acre. Lots numbered one, two, three, north half of northwest quarter, and southwest quarter of northwest quarter of section five, containing one hundred and ninety-one acres and forty-five hundredths of an acre. South half of northwest quarter, south half of southeast quarter, and east half of southwest quarter of section seven, containing two hundred and forty-one acres and ninety-six hundredths of an acre. Lots numbered three and four of section nine, containing nineteen acres and sixty hundredths of an acre. Lot number one of section eleven, containing ten acres and sixty-eight hundredths of an acre. Lots numbered one, two, and three of section thirteen, containing twenty-five acres and fifty hundredths of an acre. North half of section, northeast quarter of southeast quarter, west of southeast quarter, and southwest quarter of section seventeen, containing six hundred acres. East half of section nineteen, containing three hundred and twenty acres. East half of northeast quarter

and south half of section twenty-one, containing four hundred acres. East half of section, east half of northwest quarter, east half of southwest quarter, and lot number one of section twenty-three, containing five hundred and seven acres and eighty-two hundredths of an acre. Northwest quarter and northwest quarter of southwest quarter of section twenty-five, containing two hundred acres. East half of northwest quarter and east half of southeast quarter of section twenty-seven, containing one hundred and sixty acres. West half of northwest quarter, west half of southwest quarter, and southeast quarter of southeast quarter of section twenty-nine, containing two hundred acres. North half of northeast quarter and southeast quarter of southwest quarter of section thirty-one, containing one hundred and twenty acres. West half of northeast quarter, 198 northwest quarter, west half of southeast quarter, and north half of southwest quarter of section thirty-three, containing four hundred acres. Northeast quarter, northwest quarter of northwest quarter, and southwest quarter of southwest quarter of section thirty-five, containing two hundred and forty acres.

Township three, range two.

Lots numbered one and two of section three, containing forty acres. Southwest quarter of northeast quarter of section five, containing forty acres. Northeast quarter of northeast quarter and lots numbered one, two, and three of section nine, containing seventy-two acres and fifteen hundredths of an acre. West half of northwest quarter and southeast quarter of section thirteen, containing two hundred and forty acres.

Township one, range three.

West half of section, and north half of southeast quarter of section fifteen, containing four hundred acres. Lots numbered three, four, and southwest quarter of southeast quarter of section twenty-three, containing forty-four acres. Lots numbered one, three, four, five, and south half of northwest quarter of section twenty-five, containing one hundred and forty-two acres and forty-four hundredths of an acre. Northwest quarter and northeast quarter of southwest quarter of section twenty-seven, containing two hundred acres. All of section thirty-five, containing six hundred and forty acres.

Township two, range three.

199 East half of southeast quarter and west half of southwest quarter of section one, containing one hundred and sixty acres. East half of northeast quarter, east half of southeast quarter, northwest quarter of northwest quarter, and lots numbered one, two, three, and four of section three, containing two hundred and seventy-three acres and forty hundredths of an acre. Northeast quarter of northeast quarter and lot number two of section five, containing forty-six acres and twenty hundredths of an acre. North half of section, east half of southeast quarter, northwest quarter of southeast quarter, and lots numbered one, two, three, and four of section nine, containing five hundred and seventy-nine

acres and seventy-one hundredths of an acre. Northwest quarter of northwest quarter, south half of northeast quarter, south half of northwest quarter, and south half of section eleven, containing five hundred and twenty acres. West half of southwest quarter of section thirteen, containing eighty acres. Lots numbered one, two, three, four, and five of section twenty-one, containing one hundred and twenty-two acres and thirty-six hundredths of an acre. North half of section twenty-three, containing three hundred and twenty acres. Northeast quarter of section twenty-five, containing one hundred and sixty acres. Lots numbered two, three, and four of section twenty-nine, containing ninety-one acres and ninety-two hundredths of an acre. Lot number one of section thirty-three, containing thirteen acres and eighteen hundredths of an acre. South half of northeast quarter, north half of southeast quarter, southeast quarter of southeast quarter, northeast quarter of southeast quarter, and lots numbered two, three, four, five, seven, and eight of section 200 thirty-five, containing three hundred and twenty-nine acres and fifty-hundredths of an acre.

Township three, range three.

Lots numbered one and two of section one, containing fifty-eight acres and eighty-eight hundredths of an acre. Lot number one of section seven, containing four acres and ninety hundredths of an acre.

The said tracts as described in the foregoing pages from number one to six, inclusive, containing in the aggregate (32,517.21) thirty-two thousand five hundred and seventeen acres and twenty-one hundredths of an acre.

Now know ye, that the United States of America, in consideration of the premises and pursuant to the said acts of Congress have given and granted and by these presents do give and grant unto the said Oregon and California Railroad Company, of Oregon, and to its assigns, the tracts of land selected as aforesaid and described in the foregoing; yet excluding and excepting from the transfer by these presents "all mineral lands," should any such be found to exist in the tracts described in the foregoing; but this exception and exclusion, according to the terms of the statute, "shall not be construed to include coal and iron lands," to have and to hold the said tracts with the appurtenances unto the said Oregon and California Railroad Company, of Oregon, and to its assigns forever, with the exclusion and exception as aforesaid.

In testimony whereof, I, Ulysses S. Grant, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

201 Given under my hand at the city of Washington this ninth day of May, in the year of our Lord one thousand eight hundred and seventy-one and of the Independence of the United States the ninety-fifth.

By the President:

[SEAL.]

U. S. GRANT.

By I. PARISH, *Secretary*.

I. N. GRANGER,

Recorder of the General Land Office.

(Endorsed:) Filed Feb. 3, 1893. R. H. Lamson, clerk.

*Exhibit M.—Patent No. 2.*S. S. M.
W. C. E.

(Copy. Comprising patent 1 and 2.)

PATENT NO. 2. OREGON AND CALIFORNIA RAILROAD LANDS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Nov. 23, 1892.

I, W. M. Stone, Commissioner of the General Land Office, do hereby certify that the annexed copy of patent No. 2, issued to the Oregon and California Railroad Company July 12, 1872, and covering 120,237.46 acres of land, is a true and literal exemplification from the record thereof in this office.

In testimony whereof I have hereunto subscribed my name
202 and caused the seal of this office to be affixed at the city of Washington on the day and year above written.

[SEAL.]

W. M. STONE,
Commissioner of General Land Office.

(Compared by B. M. P.—J. M. W.)

UNITED STATES OF AMERICA.

To all to whom these presents shall come, greeting :

Whereas by the acts of Congress approved July 25th, 1866, and June 25th, 1868, "to aid in the construction of a railroad and telegraph line from the Central Pacific Railroad, in California, to Portland, in Oregon," authority is given to the Oregon and California Railroad Company, of Oregon, a corporation existing under the laws of the State, "to construct a railroad and telegraph line" under certain conditions and stipulations, as expressed in said acts; and provision is made for granting to the said company every alternate section of public land designated by odd numbers, to the amount of ten alternate sections per mile on each side of the said railroad on the line thereof, and within the limits of twenty miles on each side of said road, "not sold, reserved, or otherwise disposed of by the United States, and to which a preemption or homestead claim may not have attached at the time the line of said road is definitely fixed."

And whereas it is further enacted in said section that "when any of said alternate sections or parts of sections shall be found to have been granted, sold, reserved, occupied by homestead settlers, preempted,
203 or otherwise disposed of, other lands, designated as aforesaid, shall be selected by said companies in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, designated by odd numbers as aforesaid, nearest to and not more than ten miles beyond the limits of said first-named alternate sections."

And whereas an official statement bearing date of January 31st, 1870, from the Secretary of the Interior has been filed in the General Land Office showing that the commissioners appointed by the President under provisions of the fourth section of the aforesaid act have reported to him

that the first section of twenty miles of the road and telegraph line commencing at East Portland, in the county of Multnomah, Oregon, and terminating near Parrotts Creek, on the right or east bank of the Willamette River, in the county of Clackamas, in said State, "has been constructed and fully completed and equipped in the manner prescribed by the acts relative thereto; and the president of the Oregon and California Railroad Company, of Oregon, has applied for a conveyance of the title to the lands granted to said company by the acts of Congress of July 25th, 1866, and June 25th, 1868.

And whereas certain tracts have been selected under the acts aforesaid by J. R. Moores, the agent of the Oregon and California Railroad Company, as shown by his original lists of selections, dated February 20th, 1871, and certified under date of April 29th, 1871, by the register and receiver at Oregon City, Oregon, the said tracts being described as follows, to wit:

204 SOUTH OF BASE LINE AND EAST OF WILLAMETTE PRINCIPAL MERIDIAN.

Township three, range one.

Lot number one of section twenty-five, containing thirty acres and twenty-five hundredths of an acre. Lot numbered one, two, three, and four of section thirty-five, containing thirty-five acres and forty-two hundredths of an acre.

Township four, range one.

Southeast quarter of section one, containing one hundred and sixty acres. Northeast quarter of southwest quarter of section eleven, containing forty acres. West half of northeast quarter of section thirteen, containing eighty acres. North half of southeast quarter of section twenty-three, containing eighty acres. Lot number one of section twenty-seven, containing fifteen acres and thirty-six hundredths of an acre.

Township five, range one.

Lots numbered one, two, and three of section seven, containing eleven acres and fifty hundredths of an acre.

Township six, range one.

Northeast quarter of section one, containing one hundred and fifty-nine acres and fifty-two hundredths of an acre. Lots numbered eight and nine of section eleven, containing sixty-one acres and ninety-one hundredths of an acre. West half of section thirteen, containing three

hundred and twenty acres. East half of the northeast quarter and lots numbered one and two of section twenty-three, containing one hundred and fifty-eight acres and eighty hundredths of an acre. East half of section and southwest quarter and east half of northwest quarter of section twenty-five, containing five hundred and sixty acres. All of section thirty-five, containing six hundred and forty acres.

Township seven, range one.

Lots numbered one, two, four, five, and six of section seven, containing ninety-seven acres and forty-seven hundredths of an acre. East half of northwest quarter of section nine, containing eighty acres. Lots numbered one and two of section seventeen, containing forty-six acres and forty-three hundredths of an acre.

Township eight, range one.

South half of northwest quarter of section thirty-three, containing eighty acres.

Township nine, range one.

Lots numbered one, two, three, and four of section eleven, containing one hundred and fifty-one acres and twenty-eight hundredths of an acre. Southwest quarter of southeast quarter, southeast quarter of southwest quarter, and lots numbered five, six, seven, and eight of section thirteen, containing two hundred and thirty acres and eighty-two hundredths of an acre. Lots numbered four and five of section fifteen, containing eighty-four acres and seventy-five hundredths of an acre. South half of section, southwest quarter of northeast quarter, southeast quarter of northwest quarter, and lots numbered five, six, seven, and eight
206 of section twenty-one, containing five hundred and thirty-five acres and thirty-eight hundredths of an acre.

Southwest quarter, south half of southeast quarter, north half of northeast quarter, southeast quarter of northwest quarter, and lots numbered one, two, and three of section twenty-three, containing four hundred and sixty-two acres and thirty-nine hundredths of an acre. Northeast quarter of section twenty-five, containing one hundred and sixty acres. Lot number one of section thirty-one, containing twenty-three acres and thirty-five hundredths of an acre. Northeast quarter, north half of northwest quarter, and lots numbered four and five of section thirty-five, containing two hundred and ninety-six acres and fourteen hundredths of an acre.

Township ten, range one.

East half of section, northeast quarter of northwest quarter, and lots numbered one, two, three, four, five, and six of section one, containing four hundred and fifty-seven acres and eighty-nine hundredths of an acre. Lots numbered one, two, three, four, five, and six of section three, containing fifty-two acres and ninety-nine hundredths of an acre. Lots numbered one, two, and three of section five, containing thirty-nine acres and forty hundredths of an acre. East half and southwest quarter of section eleven, containing four hundred and eighty acres. All of section thirteen, containing six hundred and forty acres. Southeast quarter, south half of southwest quarter of section fifteen, containing two hundred and forty acres. South half of northwest quarter, north-
207 west quarter of northwest quarter, and south half of section seventeen, containing four hundred and forty acres. Northwest quarter, east half of southwest quarter, northwest quarter of southwest

quarter, and east half of section nineteen, containing five hundred and ninety-seven acres and sixteen hundredths of an acre. East half of northeast quarter of section twenty-one, containing eighty acres. Northeast quarter, north half of northwest quarter, and lots numbered one and two of section thirty-one, containing three hundred and eleven acres and fifty-two hundredths of an acre.

Township eleven, range one.

Northwest quarter, east half of southwest quarter, and east half of section five, containing five hundred and fifty-eight acres and fourteen hundredths of an acre. All of section seventeen, containing six hundred and forty acres. Southwest quarter of northeast quarter, south half of northwest quarter, north half of southwest quarter, and lots numbered one, two, three, four, five, six, seven, and eight, of section nineteen, containing three hundred and sixty-eight acres and thirty-seven hundredths of an acre. North half of southeast quarter, southeast quarter of southeast quarter, and north half of section twenty-one, containing four hundred and forty acres. South half of southeast quarter, south half of southwest quarter, northwest quarter of southeast quarter, and southeast quarter of northwest quarter of section twenty-nine, containing two hundred and forty acres. North half of northeast quarter, north half of northwest quarter, south half of southeast quarter, and lots
208 numbered one, two, three, four, and five of section thirty-one, containing three hundred and thirty-five acres.

Township three, range two.

Southeast quarter of southeast quarter, and west half of southeast quarter of section twenty-five, containing one hundred and twenty acres. Northwest quarter and north half of northeast quarter of section twenty-nine, containing two hundred and forty acres. Southwest quarter of northwest quarter, southwest quarter of southeast quarter, southeast quarter of southwest quarter, west half of southwest quarter, and southeast quarter of northeast quarter of section thirty-one, containing two hundred and thirty-eight acres and twenty-three hundredths of an acre.

Township four, range two.

South half and northwest quarter of section one, containing four hundred and eighty acres and twenty-four hundredths of an acre. East half of southwest quarter and southeast quarter of northwest quarter of section three, containing one hundred and twenty acres. West half of northwest quarter and west half of southwest quarter of section five, containing one hundred and fifty-nine acres and sixty-seven hundredths of an acre. Northeast quarter of section seven, containing one hundred and sixty acres. All of section eleven, containing six hundred and forty acres. Northwest quarter, west half of northeast quarter, and north half of southeast quarter of section thirteen, containing three hundred and twenty acres. East half and southwest quarter and east half of
209 northwest quarter of section fifteen, containing five hundred and sixty acres. Lot number two of section nineteen, containing

thirty-seven acres and fifty-six hundredths of an acre. North half of northeast quarter and east half of northwest quarter of section twenty-one, containing one hundred and sixty acres. East half of section and northwest quarter and north half of southwest quarter of section twenty-three, containing five hundred and sixty acres. East half of northeast quarter and south half of section twenty-five, containing four hundred acres. Lots numbered one and two of section thirty-five, containing thirteen acres and sixty-three hundredths of an acre.

Township five, range two.

Lots numbered three, four, and five, of section one, containing eighty-six acres and seventy-seven hundredths of an acre. Lots numbered one, two, three, and four, of section three, containing one hundred and three acres and twenty-one hundredths of an acre. Lots numbered two and three of section five, containing eleven acres and fifty-seven hundredths of an acre. Lots numbered one, two, and three, of section seven, containing fifty-seven acres and thirty-nine hundredths of an acre. East half of northeast quarter, and lots numbered two and three of section eleven, containing one hundred and twelve acres and seventy-three hundredths of an acre. Southeast quarter, south half of northeast quarter, and lots numbered two, three, and four, of section 13, containing three hundred and thirty-five acres and sixty hundredths of an acre. East half of northeast quarter, northeast quarter of southeast quarter, and lots
210 numbered one and two of section twenty-five, containing one hundred and seventy-six acres and ten hundredths of an acre. South half and northwest quarter, and south half of northeast quarter of section thirty-five, containing five hundred and sixty acres.

Township six, range two.

North half and southeast quarter, and east half of southwest quarter of section one, containing five hundred and sixty acres and twenty hundredths of an acre. North half of southwest quarter, northwest quarter of southeast quarter, and north half of section three, containing four hundred and forty-one acres and seventy-six hundredths of an acre. All of section five, containing six hundred and forty-three acres and seventy hundredths of an acre. All of section seven, containing six hundred and forty-three acres and forty-eight hundredths of an acre. Northwest quarter, north half of southwest quarter, southwest quarter of southwest quarter, northwest quarter of southeast quarter, and southwest quarter of northeast quarter of section nine, containing three hundred and sixty acres. West half of northwest quarter, west half of southwest quarter, southeast quarter of northwest quarter, southwest quarter of northeast quarter, and northeast quarter of northeast quarter of section eleven, containing two hundred and eighty acres. All of section thirteen, containing six hundred and forty acres. North half and southeast quarter of section fifteen, containing four hundred and eighty acres. North half and southeast quarter of section seventeen, containing four hundred and eighty acres.

Township seven, range two.

All of section three, containing six hundred and thirty-six acres and thirty-eight hundredths of an acre. All of section five, containing six hundred and thirty-eight acres and twenty hundredths of an acre. Southwest quarter and south half of northwest quarter of section seven, containing two hundred and thirty-seven acres and four hundredths of an acre. All of section nine, containing six hundred and forty acres. All of section seventeen, containing six hundred and forty acres. North half of section nineteen, containing three hundred and twenty-two acres and thirty-six hundredths of an acre. West half of section one, containing three hundred and twenty acres. All of section eleven, containing six hundred and forty acres. All of section thirteen, containing six hundred and forty acres. South half of section fifteen, containing three hundred and twenty acres. All of section twenty-one, containing six hundred and forty acres. All of section twenty-three, containing six hundred and forty acres. East half of section twenty-five, containing three hundred and twenty acres.

Township nine, range two.

Northeast quarter and east half of northwest quarter of section seven, containing two hundred and forty acres. South half of northeast quarter, south half of northwest quarter, northwest quarter of northeast quarter, and south half of section seventeen, containing five hundred and twenty acres. Northeast quarter, west half of southeast quarter, 212 east half of northwest quarter, east half of southwest quarter, and southwest quarter of northwest quarter of section nineteen, containing four hundred and forty acres. North half of northwest quarter, north half of southeast quarter, and lots numbered one and two of section twenty-one, containing two hundred and eight acres. Lots numbered one, two, three, four, and five of section twenty-seven, containing one hundred and fifty-two acres.

Township three, range three.

North half of northwest quarter of section nineteen, containing eighty acres. Southwest quarter of southeast quarter, northeast quarter of southeast quarter, southeast quarter of northeast quarter, and lots numbered one, two, three, four, and five of section twenty-seven, containing one hundred and sixty-five acres and ninety-five hundredths of an acre. Southeast quarter, south half of southwest quarter, northeast quarter of northwest quarter, and lots numbered one, two, three, and four of section twenty-nine, containing three hundred and eighty-one acres and forty-four hundredths of an acre. South half of southwest quarter, south half of southeast quarter, northwest quarter of southwest quarter, and northeast quarter of southeast quarter of section thirty-one, containing two hundred and fifty-two acres and seventy-nine hundredths of an acre. Northwest quarter, and northwest quarter of southwest quarter of section thirty-three, containing two hundred acres. North half of section thirty-five, containing three hundred and twenty acres.

North half and southeast quarter, north half of southwest quarter, and lots numbered one and two of section one, containing six hundred and five acres and sixty-two hundredths of an acre. South half of southeast quarter, northeast quarter of northwest quarter, southwest quarter of northwest quarter, and northwest quarter of southwest quarter of section three, containing two hundred acres and twenty hundredths of an acre. North half of southeast quarter, southwest quarter of southeast quarter, and west half of section five, containing four hundred and forty acres and twenty-three hundredths of an acre. Northeast quarter, south half of northwest quarter, north half of southwest quarter, and lot number one of section seven, containing three hundred and forty-two acres and twenty-seven hundredths of an acre. West half of northeast quarter, west half of southeast quarter, and northeast quarter of northwest quarter of section nine, containing two hundred acres. Northwest quarter of northeast quarter and lots numbered one, two, and three of section eleven, containing sixty-eight acres and thirty-four hundredths of an acre. West half and northeast quarter and west half of southeast quarter of section thirteen, containing five hundred and sixty acres. West half of northwest quarter of section seventeen, containing eighty acres. West half of southwest quarter of section nineteen, containing ninety-four acres and sixty-four hundredths of an acre. East half of northeast quarter, west half of northwest quarter, and

214 south half of section twenty-one, containing four hundred and eighty acres. All of section twenty-three, containing six hundred and forty acres. East half and northwest quarter, and northwest quarter of southwest quarter of section twenty-five, containing five hundred and twenty acres. North half and southwest quarter and west half of southeast quarter of section twenty-seven, containing five hundred and sixty acres. Southeast quarter, east half of northeast quarter, southwest quarter of northeast quarter, northwest quarter of northwest quarter, and east half of southwest quarter of section twenty-nine, containing four hundred acres. Southeast quarter, east half of northeast quarter, and southwest quarter of northeast quarter of section thirty-one, containing two hundred and eighty acres. North half of section, north half of southeast quarter, north half of southwest quarter, and southwest quarter of southwest quarter of section thirty-three, containing five hundred and twenty acres. Southwest quarter, south half of northwest quarter, southwest quarter of northeast quarter, and northwest quarter of southeast quarter of section thirty-five, containing three hundred and twenty acres.

Township five, range three.

All of section one, containing six hundred and forty-three acres and twenty hundredths of an acre. All of section three, containing six hundred and twenty-nine acres and twenty-six hundredths of an acre. South half of northeast quarter, south half of northwest quarter, and lots numbered one and two of section five, containing three hundred and ninety-nine acres and thirty-five hundredths

215 of an acre. Northeast quarter and southeast quarter of northwest quarter, north half of southeast quarter, southeast quar-

ter of southeast quarter, northeast quarter of southwest quarter, and lot number three of section seven, containing four hundred and ten acres and two hundredths of an acre. All of section nine, containing six hundred and forty acres. All of section eleven, containing six hundred and forty acres. All of section thirteen, containing six hundred and forty acres. All of section fifteen, containing six hundred and forty acres. All of section seventeen, containing six hundred and forty acres. South half of section, south half of northwest quarter, northwest quarter of northwest quarter, and southwest quarter of northeast quarter of section nineteen, containing five hundred and twenty-six acres and seventy-eight hundredths of an acre. All of section twenty-one, containing six hundred and forty acres. All of section twenty-three, containing six hundred and forty acres. All of section twenty-five, containing six hundred and forty acres. All of section twenty-seven, containing six hundred and forty acres. North half of section, east half of southeast quarter, and west half of southwest quarter of section twenty-nine, containing four hundred and eighty acres. Southeast quarter, east half of northwest quarter, northwest quarter of northeast quarter, northeast quarter of southwest quarter, and lots numbered one and two of section thirty-one, containing four hundred and twenty-six acres and eighty-six hundredths of an acre. All of section thirty-three, containing six hundred and forty acres. North half of section thirty-five, containing three hundred and twenty acres. South half of section thirty-five, containing three hundred and twenty acres.

Township three, range four.

Northwest quarter of northwest quarter, and lots numbered one, two, three, four, five, six, seven, eight, and nine of section thirty-one, containing two hundred and twenty-seven acres and seven hundredths of an acre. East half of section and lots numbered one, two, three, four, and five of section thirty-three, containing four hundred and twenty-three acres and forty-one hundredths of an acre. South half of southwest quarter of section thirty-five, containing eighty acres.

Township four, range four.

East half and southwest quarter of section one, containing four hundred and eighty acres and eleven hundredths of an acre. East half and northwest quarter, east half of southwest quarter, and lots numbered one and two of section three, containing six hundred and forty-four acres and seventy hundredths of an acre. Northwest quarter, northwest quarter of northeast quarter, northwest quarter of southwest quarter, and lot numbered one of section seven, containing two hundred and fifty-nine acres and eighty-seven hundredths of an acre. Lots numbered one, two, three, four, five, six, seven, eight, and nine, and southeast quarter of southeast quarter of section nine, containing one hundred and eighty-six acres and sixty-seven hundredths of an acre. East half and northwest quarter, east half of southwest quarter, and lots numbered one and two of section eleven, containing six hundred and nine acres and eighty-seven hundredths of an acre. All of section thirteen, containing six hundred and forty acres. East

half of section, south half of southwest quarter, and lots numbered one, two, three, four, and five of section fifteen, containing five hundred and thirty acres and sixty-eight hundredths of an acre. Southwest quarter, south half of southeast quarter, southwest quarter of northwest quarter, and lots numbered one, four, five, seven, and eight of section seventeen, containing four hundred and four acres and sixteen hundredths of an acre. South half of section, south half of northeast quarter and south half of northwest quarter of section nineteen, containing four hundred and seventy-six acres and seventy hundredths of an acre. All of section twenty-one, containing six hundred and forty acres. All of section twenty-three, containing six hundred and forty acres. West half of section twenty-five, containing three hundred and twenty acres. All of section twenty-seven, containing six hundred and forty acres. All of section twenty-nine, containing six hundred and forty acres. All of section thirty-one, containing six hundred and forty-five acres and twenty-two hundredths of an acre. All of section thirty-three, containing six hundred forty acres. All of section thirty-five, containing six hundred and forty acres. East half of section twenty-five, containing three hundred and twenty acres.

Township five, range four.

218 West half of section three, containing three hundred and twenty acres. All of section five, containing six hundred and thirty-four acres and eighty-eight hundredths of an acre. All of section seven, containing six hundred and forty-eight acres and thirty-eight hundredths of an acre. All of section nine, containing six hundred and forty acres.

Township three, range five.

South half of section thirty-one, containing three hundred and nineteen acres and seventy-two hundredths of an acre. South half of northwest quarter, south half of northeast quarter, and south half of section twenty-five, containing four hundred and eighty acres. South half of northwest quarter, south half of northeast quarter, and south half of section twenty-seven, containing four hundred and eighty acres. South half of section thirty-three, containing three hundred and twenty acres. All of section thirty-five, containing six hundred and forty acres.

Township four, range five.

All of section seven, containing six hundred and thirty-nine acres and twenty-six hundredths of an acre. All of section one, containing six hundred and forty acres and twenty-two hundredths of an acre. All of section three, containing six hundred and thirty-eight acres and forty-six hundredths of an acre. All of section five, containing six hundred and forty-three acres and sixty-six hundredths of an acre. All of section nine, containing six hundred and forty acres. All of section eleven, containing six hundred and forty acres. All of section thirteen, containing six hundred and forty acres. All of section fifteen, containing six hundred and forty acres. All of section seventeen, containing six hundred and forty acres. All of section twenty-

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three, containing six hundred and forty acres. All of section twenty-one, containing six hundred and forty acres. Northeast quarter of section twenty-seven, containing one hundred and sixty acres.

SOUTH OF BASE LINE AND WEST OF WILLAMETTE PRINCIPAL MERIDIAN.

Township three, range one.

West fractional half of northwest quarter, north half of southwest quarter, and north half of southeast quarter of section nineteen, containing two hundred and sixty-three acres and four hundredths of an acre. Lot number three of section twenty-five, containing nineteen acres and eight hundredths of an acre.

Township four, range one.

Lot number one of section twenty-seven, containing two acres and thirteen hundredths of an acre. Lot number one of section twenty-nine, containing three acres and fifty-six hundredths of an acre.

Township five, range one.

Lots numbered five and six of section nine, containing four acres and thirty hundredths of an acre. Northeast quarter of northwest quarter, and lots numbered one and two of section twenty-one, containing sixty-seven acres and thirty-four hundredths of an acre.

Township six, range one.

220 Northwest quarter of northwest quarter of section three, containing thirty-eight acres and ninety hundredths of an acre. Lot number one of section five, containing five acres and ninety-two hundredths of an acre. Lots numbered three and four of section seven, containing twenty-five acres and twenty-nine hundredths of an acre.

Township seven, range one.

East half of southwest quarter of northwest quarter of section eleven, containing twenty acres. Lot number three of section twenty-five, containing fourteen acres and ninety hundredths of an acre.

Township nine, range one.

Lot number five of section thirteen, containing thirty-nine acres and fifty hundredths of an acre. Northwest quarter of northeast quarter, and lot number six, of section twenty-one, containing seventy-nine acres and thirty-five hundredths of an acre.

Township ten, range one.

South half of section thirteen, containing three hundred and twenty acres. Northwest quarter, east half of southeast quarter, southwest quarter of southeast quarter, and northwest quarter of southwest quarter

of section twenty-three, containing three hundred and twenty acres. Northwest quarter, southeast quarter, west half of northeast quarter, southeast quarter of northeast quarter, east half of southwest quarter, and northwest quarter of southwest quarter of section twenty-five, containing five hundred and sixty acres. Northeast quarter of northeast quarter of section twenty seven, containing forty acres.

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Township eleven, range one.

Northeast quarter and north half of southeast quarter of section twenty-three, containing two hundred and forty acres. South half of southeast quarter, south half of southwest quarter, and northeast quarter of southeast quarter of section twenty-five, containing two hundred acres.

Township three, range two.

Lots numbered one and two of section twenty-one, containing seven acres and sixty-seven hundredths of an acre. Northwest quarter, south half of northeast quarter, and west half of southwest quarter of section twenty-three, containing three hundred and twenty acres. Northwest quarter of northeast quarter, southwest quarter of northeast quarter, west half of southeast quarter, and lots numbered one, two, and three of section twenty-five, containing two hundred and twenty-three acres and twenty-four hundredths of an acre. Lot number five of section twenty-seven, containing twenty acres and ninety-six hundredths of an acre. Lot number six of section thirty-one, containing fifty-one acres and twenty-nine hundredths of an acre. Lots numbered four, five, and six of section thirty-five, containing thirty-five acres and seventy hundredths of an acre.

Township six, range two.

Lot number one of section twenty-five, containing three acres and ninety-two hundredths of an acre. East half of northwest quarter, northeast quarter of southwest quarter of section twenty-seven,
222 containing one hundred and twenty acres. Lot number four of section thirty-three, containing five acres and fifty-three hundredths of an acre.

Township seven, range two.

Lot number one of section one, containing ten hundredths of an acre.

Township nine, range two.

Lot number three of section twenty-nine, containing sixteen acres and seventy-five hundredths of an acre.

Township ten, range two.

Lots numbered one, two, and three of section five, containing thirty-six acres and ninety hundredths of an acre. Lot number three of section seven, containing twenty-three acres and seventy-six hundredths of an

acre. Lot number one of section twenty-three, containing thirty-nine acres and twenty hundredths of an acre. North half of northwest quarter, southwest quarter of northwest quarter, northeast quarter of southeast quarter, and south half of southeast quarter of section twenty-five, containing two hundred and forty acres.

Township thirteen, range two.

Northeast quarter of northwest quarter and northwest quarter of southeast quarter of section nineteen, containing eighty acres. Northwest quarter of northeast quarter of section twenty-one, containing forty acres. Northeast quarter, north half of northwest quarter, north half

of southeast quarter, and southeast quarter of southeast quarter of section twenty-seven, containing three hundred and sixty acres.

South half of northeast quarter of section twenty-nine, containing eighty acres.

Township one, range three.

East half of northwest quarter of section seventeen, containing eighty acres. Northwest quarter and southeast quarter, north half of southwest quarter, and southeast quarter of southwest quarter of section twenty-nine, containing four hundred and forty acres.

Township three, range three.

Lots numbered five and six of section twenty-three, containing thirteen acres and sixty hundredths of an acre. Lot number five of section twenty-nine, containing thirteen acres and fifty-five hundredths of an acre.

Township four, range three.

Lot number six of section three, containing twenty acres and five hundredths of an acre. Lots numbered ten and eleven of section thirty-five, containing eleven acres and five hundredths of an acre.

Township five, range three.

Northwest quarter of southwest quarter and lots numbered five and six of section one, containing one hundred and six acres and twenty-eight hundredths of an acre. Lots numbered two, three, six, seven, eight, ten, eleven, and twelve of section three, containing one hundred and twenty-three acres and twenty-nine hundredths of an acre. Lot number one of section five, containing three acres and ninety hundredths of an acre.

Southeast quarter of northwest quarter, northwest quarter of northwest quarter, and lots numbered three, four, five, six, and nine of section eleven, containing one hundred and seventy-nine acres and twenty-four hundredths of an acre. Lots numbered three and four of section thirteen, containing thirty-four acres and forty-seven hundredths of an acre. Southeast quarter of southeast quarter and lots numbered five, six, seven, and ten of section fifteen, containing one hundred and thirty-eight acres and seventy-five hundredths of an acre. Northeast quarter

of southeast quarter of section twenty-three, containing forty acres. Lots numbered five, six, seven, and eight of section twenty-five, containing one hundred and forty-nine acres and sixty-three hundredths of an acre.

Township six, range three.

Lot number two of section one, containing nine acres. Lots numbered three and four of section three, containing sixty-eight acres and fifty-nine hundredths of an acre. Lots numbered five and six of section nine, containing twenty acres and sixty hundredths of an acre. Lots numbered one and five of section twenty-one, containing fourteen acres and thirty-two hundredths of an acre. Lots numbered one and two of section twenty-seven, containing thirty acres and forty-eight hundredths of an acre.

Township seven, range three.

Lots numbered five and six of section three, containing eighty-seven acres and twenty-five hundredths of an acre. Lot number eleven of section fifteen, containing thirty-nine acres and thirty-eight hundredths of an acre. Lot number three of section twenty-nine, containing five acres and forty-two hundredths of an acre.

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Township eight, range three.

Lots numbered one and six of section three, containing six acres and thirty-four hundredths of an acre. Lots numbered one, two, three, and four of section thirty-one, containing twenty-eight acres and forty-six hundredths of an acre.

Township nine, range three.

Lot number five of section twenty-nine, containing fifty acres and eighty hundredths of an acre. Southwest quarter of northwest quarter and lots numbered three and four of section thirty-one, containing one hundred and thirty acres and ninety-five hundredths of an acre. West half of southwest quarter of section thirty-five, containing eighty acres.

Township one, range four.

West half of northwest quarter, northwest quarter of southwest quarter, and lots numbered one, two, and three of section three, containing one hundred and sixty-six acres and ninety-six hundredths of an acre. All of section five, containing six hundred and thirty-seven acres and ninety-five hundredths of an acre. Northwest quarter of northwest quarter and lots numbered one and two of section seven, containing fifty-seven acres and forty-six hundredths of an acre.

All of section nine, containing six hundred and forty acres. Lots numbered one, two, and three of section eleven, containing fifteen acres and eighty-six hundredths of an acre. Northwest quarter, southeast
226 quarter, and west half of northeast quarter of section fifteen, containing four hundred acres. Southwest quarter of southwest quarter of section nineteen, containing thirty-eight acres and sixty-two

hundredths of an acre. Lots numbered five and six of section twenty-one, containing six acres and ninety-six hundredths of an acre. North half of southwest quarter and lots numbered one, two, three, and four of section twenty-seven, containing one hundred and eighty-six acres and one hundredth of an acre. East half, northwest quarter, north half of southwest quarter of section twenty-nine, containing five hundred and sixty acres. Northwest quarter of northwest quarter and lot number one of section thirty-three, containing seventy-six acres and thirty hundredths of an acre.

Township two, range four.

South half of southwest quarter, south half of north half of southwest quarter, and lots numbered one, three, and four of section three, containing one hundred and seventy acres and ninety hundredths of an acre. South half of section, east half of northeast quarter of section five, containing three hundred and ninety-nine acres and forty-eight hundredths of an acre. Northeast quarter, east half of northwest quarter, and east half of southeast quarter of section nine, containing three hundred and twenty acres. Southeast quarter of southwest quarter, southwest quarter of northwest quarter, and lot number two of section eleven, containing ninety-five acres and twenty hundredths of an acre. Lots numbered one, three, four, and five of section thirteen, containing one hundred and forty-five acres and seventy hundredths of an acre. Southeast quarter, 227 east half of northwest quarter, northwest quarter of northwest quarter, and northeast quarter of southwest quarter of section fifteen, containing three hundred and twenty acres. Lot number one of section twenty-one, containing two acres and sixty-nine hundredths of an acre. North half of northwest quarter, northwest quarter of northeast quarter, and lot number one of section twenty-three, containing one hundred and fifty-five acres and fifty-six hundredths of an acre. North half of northwest quarter and south half of southwest quarter of section twenty-five, containing one hundred and sixty acres.

Township three, range four.

Lots numbered one and two of section thirteen, containing eighty-seven hundredths of an acre. Lots numbered, one, two, and three of section twenty-five, containing twenty acres and eighty-eight hundredths of an acre.

Township four, range four.

Lots numbered one and three of section one, containing twenty acres and thirty-four hundredths of an acre. Lot number one of section thirteen, containing two acres and ninety-four hundredths of an acre.

Township five, range four.

Lot number one of section nine, containing twelve acres and thirteen hundredths of an acre. North half of southwest quarter and northwest quarter of southeast quarter of section fifteen, containing one hundred

and twenty acres. Lot number one of section nineteen, containing eleven acres and ninety-two hundredths of an acre. Lots numbered 228 three and four of section twenty-five, containing two acres and sixty-eight hundredths of an acre. Lot number one of section twenty-seven, containing thirteen acres. Lot number one of section thirty-five, containing twenty-five acres and forty-four hundredths of an acre.

Township six, range four.

Northeast quarter of southeast quarter of section three, containing forty acres.

Township eight, range four.

Southwest quarter of northeast quarter and southeast quarter of northwest quarter of section thirteen, containing eight acres.

Township nine, range four.

North half of northeast quarter and lots numbered six, seven, eight, and nine of section thirty-five, containing one hundred and ninety-one acres and thirty-one hundredths of an acre.

Township ten, range four.

Lots numbered seven and eight of section fifteen, containing fifteen acres and ninety hundredths of an acre.

Township one, range five.

All of section one, containing six hundred and forty acres. East half of section three, containing three hundred and nineteen acres and seventy-seven hundredths of an acre. All of section eleven, containing six hundred and forty acres. South half and northwest quarter, north half of northeast quarter, and southwest quarter of northeast quarter 229 of section thirteen, containing six hundred acres. East half of section fifteen, containing three hundred and twenty acres. North half and southwest quarter and west half of southeast quarter of section twenty-three, containing five hundred and sixty acres. Northwest quarter of northwest quarter and lot number four of section twenty-five, containing sixty-two acres and forty hundredths of an acre. All of section twenty-seven, containing six hundred and forty acres. All of section thirty-three, containing six hundred and forty acres. West half of section thirty-five, containing three hundred and twenty acres.

Township two, range five.

East half of northwest quarter, south half of northeast quarter, northwest quarter of southeast quarter, northeast quarter of southwest quarter, and lots numbered one and two of section one, containing three hundred and three acres and seventy-one hundredths of an acre. All of section three, containing six hundred and forty acres and seventy-eight

hundredths of an acre. South half of section, south half of northwest quarter, northwest quarter of northwest quarter, and southeast quarter of northeast quarter of section five, containing four hundred and seventy-nine acres and eight hundredths of an acre. All of section seven, containing six hundred and forty-five acres and sixty hundredths of an acre. West half of section, west half of northeast quarter, west half of southeast quarter, northeast quarter of northeast quarter, and southeast quarter of southeast quarter of section nine, containing five hundred and sixty acres. All of section seventeen, containing six hundred and forty acres. All of section nineteen, containing six hundred and forty-four acres and forty-eight hundredths of an acre. North half of section, north half of southeast quarter, north half of southwest quarter, southwest quarter of southwest quarter, and southeast quarter of southeast quarter of section twenty-one, containing five hundred and sixty acres. North half of north half of southwest quarter and lots numbered one and two of section twenty-seven, containing seventy-eight acres and twenty-five hundredths of an acre. East half of northwest quarter, northwest quarter of northwest quarter, and east half of section twenty-nine, containing four hundred and forty acres. South half of northeast quarter and south half of section thirty-one, containing four hundred and three acres and ninety-seven hundredths of an acre. West half of southwest quarter, north half of northeast quarter, and lots numbered one and two of section thirty-three, containing two hundred and five acres and ninety-eight hundredths of an acre. West half of southwest quarter, east half of southeast quarter, southeast quarter of northeast quarter, and lot number one of section thirty-five, containing two hundred and eighteen acres.

Township three, range five.

Lots numbered one, two, three, and four of section one, containing sixty-five acres and twenty-six hundredths of an acre. West half of northeast quarter, west half of southeast quarter, east half of northeast quarter, and west half of section seven, containing five hundred and sixty-five acres and sixty hundredths of an acre.

Southwest quarter of section eleven, containing one hundred and sixty acres. North half of southwest quarter and lot number one of section thirteen, containing one hundred and twelve acres and forty hundredths of an acre. West half of northwest quarter, west half of southwest quarter, northeast quarter of northwest quarter and southeast quarter of southwest quarter of section seventeen, containing two hundred and forty acres. All of section nineteen, containing six hundred and fifty acres and forty hundredths of an acre. West half of southwest quarter of section twenty-one, containing eighty acres. Southwest quarter of northwest quarter and northwest quarter of southwest quarter of section twenty-seven, containing eighty acres. South half of northeast quarter, south half of northwest quarter, north half of northwest quarter, northeast quarter of northeast quarter, and south half of section twenty-nine, containing six hundred acres. All of section thirty-one, containing six hundred and fifty-five acres and seventy-four hundredths of an acre. West half of northeast quarter, west half of southeast quarter, east half of southeast quarter, southeast quarter of northeast quarter, and west half

of section thirty-three, containing six hundred acres. Lots numbered one and two of section twenty-five, containing fifty-one acres and forty hundredths of an acre. East half of northeast quarter of section thirty-five, containing eighty acres.

Township four, range five.

Lot number two of section one, containing twenty-four acres and 232 ten hundredths of an acre. Southwest quarter of northwest quarter of section eleven, containing forty acres. Lots numbered two and six of section fifteen, containing thirty-nine acres and forty-one hundredths of an acre. South half of northwest quarter and lots numbered two, three, and four of section twenty-one, containing one hundred and seventy-eight acres and sixty-six hundredths of an acre. Northeast quarter of southeast quarter and lot number one of section thirty-one, containing sixty-nine acres and sixty hundredths of an acre. North half of southeast quarter and east half of southwest quarter of section three, containing one hundred and sixty acres. Northeast quarter of section five, containing one hundred and fifty-six acres and fifty-seven hundredths of an acre. North half of section seven, containing three hundred and twenty-four acres and fifty-one hundredths of an acre. West half of northeast quarter of section nine, containing eighty acres. Southeast quarter, south half of northeast quarter, northwest quarter, north half of southwest quarter, and southwest quarter of southwest quarter of section nineteen, containing five hundred and twenty-seven acres and forty-six hundredths of an acre.

Township five, range five.

Lot number seven of section five, containing eleven acres and twenty-six hundredths of an acre. Southeast quarter of northeast quarter and lots numbered four and five of section seven, containing forty-four acres. Lots numbered one, two, three, four, five, and six of section thirty-one, containing thirty-six acres and seventeen hundredths of an acre.

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Township six, range five.

Lots numbered one and two of section seven, containing fourteen acres and thirty-eight hundredths of an acre. Lot number three of section fifteen, containing nine acres and sixty hundredths of an acre. Lots numbered one, two, three, and four of section thirty-one, containing sixty-eight acres and forty-four hundredths of an acre. Lot number six of section thirty-three, containing fifteen acres and fourteen hundredths of an acre.

Township seven, range five.

Lots numbered four and five of section seventeen, containing seventy-one acres. Northwest quarter of northwest quarter and lots numbered four, five, six, seven, and eight of section nineteen, containing eighty-seven acres and seven hundredths of an acre.

Township eight, range five.

Southeast quarter of southeast quarter of section twenty-nine, containing forty acres.

Township ten, range five.

Southwest quarter, north half of southeast quarter, and lots numbered one, two, three, and four of section seven, containing three hundred and nineteen acres and twenty-five hundredths of an acre. West half of southwest quarter of section twenty-five, containing eighty acres.

Township thirteen, range five.

Lot number two of section seventeen, containing nineteen acres and forty-three hundredths of an acre. Lots numbered three and eight of section twenty-seven, containing nineteen acres and ninety-one hundredths of an acre. Lot number three of section twenty-nine, containing six acres and seventy-seven hundredths of an acre.

Township four, range six.

East half of southeast quarter, and north half of section twenty-three, containing four hundred acres. Southwest quarter of southwest quarter of section twenty-five, containing forty acres. Southwest quarter and west half of southeast quarter of section twenty-seven, containing two hundred and forty acres. Northwest quarter, west half of northeast quarter, and north half of southwest quarter of section thirty-three, containing three hundred and twenty acres. Lots numbered one, two, and three of section thirty-five, containing thirty-six acres and two hundredths of an acre.

Township five, range six.

South half of northeast quarter and lots numbered one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, and thirteen of section one, containing three hundred and eighty-three acres and fifty-seven hundredths of an acre. Northwest quarter of northwest quarter of section thirteen, containing forty acres. Lots numbered one, two, three, and four of section twenty-seven, containing fifteen acres and fifty-eight hundredths of an acre. East half of northwest quarter, east half of southwest quarter, northwest quarter of northwest quarter, and lots numbered one and two of section three, containing two hundred and sixty-eight acres and six hundredths of an acre. North half of northeast quarter, north half of northwest quarter, southwest quarter of northwest quarter, northwest quarter of southwest quarter, and southeast quarter of southwest quarter of section five, containing two hundred and eighty acres and eight hundredths of an acre. Lots numbered one, two, three, four, five, and six, of section seven, containing one hundred and sixteen acres and thirty-nine hundredths of an acre. East half of northeast quarter, southwest quarter of southeast quarter of section nine, containing one hundred and twenty acres. Lots numbered one, two, three, four, five, eight, nine, and ten, of section nineteen, containing two hundred and thirty-five acres and twenty-two hundredths of an acre. East half of northeast quarter, and lots numbered one and two of section twenty-one, containing one hundred and forty-five acres and forty-four hundredths of an acre. Lots numbered two of section twenty-nine, containing sixteen acres and

thirty hundredths of an acre. Lots numbered one, two, three, and four, of section thirty-one, containing sixty-one acres and forty-one hundredths of an acre.

Township six, range six.

Lots numbered one and two of section nine, containing forty-three acres and fifty-four hundredths of an acre. Lot number three of section five, containing twelve acres and seven hundredths of an acre. Southwest quarter of southwest quarter, and lots numbered two, three, and four, of section twenty-nine, containing ninety acres and seventy-five hundredths of an acre.

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Township seven, range six.

Southwest quarter of northeast quarter, and lot number one of section five, containing eighty-four acres and ninety-one hundredths of an acre. Southeast quarter, south half of southwest quarter, southeast quarter of northeast quarter, and lots numbered two, three, four, five, and six, of section nine, containing four hundred and nine acres and seventy-eight hundredths of an acre. Lots numbered seven and eight of section thirteen, containing twenty-two acres. East half of northeast quarter, west half of northwest quarter, and south half of section seventeen, containing four hundred and eighty acres. South half of section twenty-one, containing three hundred and twenty acres. East half of section twenty-nine, containing three hundred and twenty acres. All of section thirty-three, containing six hundred and forty acres. All of section seven, containing six hundred and seventy-four acres and seventy-eight hundredths of an acre. All of section nineteen, containing six hundred and fifty-eight acres and forty hundredths of an acre. West half of section twenty-nine, containing three hundred and twenty acres. All of section thirty-one, containing six hundred and sixty-one acres and ninety-eight hundredths of an acre.

Township eight, range six.

West half of section five, containing three hundred and twenty-one acres and eighty-nine hundredths of an acre. East half of southeast quarter, west half of southwest quarter, and north half of section
237 seven, containing four hundred and ninety-eight acres and eighty-two hundredths of an acre. North half of section seventeen, containing three hundred and twenty acres. All of section thirty-one, containing six hundred and thirty-nine acres and seventy-six hundredths of an acre. Northwest quarter of section thirty-three, containing one hundred and sixty acres. East half of section five, containing three hundred and twenty-one acres and sixty-nine hundredths of an acre. All of section nine, containing six hundred and forty acres. Lots numbered one and two of section twenty-one, containing twenty-nine acres and ninety-six hundredths of an acre. Lots numbered one and two of section twenty-seven, containing forty-nine acres and fifty-five hundredths of an acre. North half of northeast quarter, and southwest quarter of northeast quarter of section thirty-three, containing one hundred and twenty acres. Lot number four of section thirty-five, containing twelve acres and fourteen hundredths of an acre.

Township nine, range six.

Southeast quarter of northwest quarter, northeast quarter of southwest quarter, and south half of southeast quarter of section three, containing one hundred and sixty acres. Lots numbered four, five, six, seven, and eight, of section fifteen, containing forty-six acres and eighty-seven hundredths of an acre. Northeast quarter, north half of northwest quarter, and northeast quarter of southwest quarter of section twenty-one, containing two hundred and eighty acres. Lot number two of section twenty-three, containing eleven acres and ninety hundredths of an acre. Lots numbered four, five, six, seven, eight, and nine, of section twenty-five, containing ninety-one acres and ninety hundredths of an acre. Lots numbered five and six of section twenty-nine, containing sixty-eight acres and thirty-two hundredths of an acre. Lots numbered one, seven, eight, and nine, of section thirty-three, containing seventy-three acres and fifty-five hundredths of an acre. East half of northeast quarter, northwest quarter of northeast quarter of section thirty-five, containing one hundred and twenty acres. North half of southeast quarter, and north half of section five, containing four hundred and six acres and thirty-six hundredths of an acre. Southwest quarter, north half of southeast quarter, and north half of section seven, containing five hundred and seventy-five acres and seventy-six hundredths of an acre. Northeast quarter of section seventeen, containing one hundred and sixty acres. All of section nineteen, containing six hundred and sixty-five acres and forty hundredths of an acre. Lots numbered three and five of section thirty-one, containing forty-five acres and thirteen hundredths of an acre.

Township ten, range six.

West half of northwest quarter and southwest quarter of section seven, containing two hundred and sixty acres and forty-two hundredths of an acre. Southwest quarter of south half of northwest quarter of section three, containing two hundred and forty acres. Lots numbered eight and nine of section five, containing twenty-eight acres and fifty hundredths of an acre. Southeast quarter and south half of northeast quarter of section seven, containing two hundred and forty acres. Lots numbered two, three, and four, of section nine, containing sixty-eight acres and thirty-nine hundredths of an acre. Lot number five of section eleven, containing thirteen acres and ninety-two hundredths of an acre. East half of northeast quarter and lots numbered one and two of section thirteen, containing one hundred and fifty-four acres and seventy-eight hundredths of an acre. Northwest quarter of northwest quarter and lot number two of section seventeen, containing fifty-two acres and twenty-four hundredths of an acre.

Township thirteen, range six.

South half of southwest quarter of section five, containing eighty acres. South half of section, south half of northeast quarter and south half of northwest quarter of section twenty-one, containing four hundred and eighty acres. West half of southwest quarter of section twenty-three, containing eighty acres. North half of section twenty-five, containing three hundred and twenty acres. North half and southeast

quarter of section twenty-seven, containing four hundred and eighty acres. Southeast quarter of section twenty-nine, containing one hundred and sixty acres. Southeast quarter of section thirty-one, containing one hundred and sixty acres. All of section thirty-three, containing six hundred and forty acres. North half of section, north half of southeast quarter, north half of southwest quarter, and southeast quarter of southeast quarter of section thirty-five, containing five hundred and twenty acres.

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Township five, range seven.

North half of northeast quarter, northeast quarter of northwest quarter, and west half of southeast quarter of section one, containing two hundred and three acres and eighty-seven hundredths of an acre. Southwest quarter, south half of northwest quarter, southwest quarter of northeast quarter, south half of southeast quarter, and northwest quarter of southeast quarter of section eleven, containing four hundred acres. Lots numbered one, two, three, four, five, six, seven, eight, and nine of section thirteen, containing one hundred and ninety acres and forty-five hundredths of an acre. North half of section, and southwest quarter, north half of southeast quarter, and southwest quarter of southeast quarter of section fifteen, containing six hundred acres. All of section twenty-one, containing six hundred and forty acres. Northeast quarter of northwest quarter, south half of southwest quarter, and lots numbered four, five, and six of section twenty-three, containing one hundred and fifty-four acres and thirty-three hundredths of an acre. Northeast quarter and lots numbered one and four of section twenty-seven, containing one hundred and eighty-five acres and ninety-five hundredths of an acre. Southwest quarter and lots numbered one, two, three, four, five, six, seven, eight, and nine of section thirty-three, containing three hundred and seventeen acres and seventy hundredths of an acre. Lots numbered one and two of section thirty-five, containing twenty-seven acres and three hundredths of an acre.

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Township six, range seven.

Northwest quarter, south half of northeast quarter, and northwest quarter of southeast quarter of section three, containing two hundred and seventy-six acres and eighty-five hundredths of an acre. Lots numbered one and two of section nine, containing fifty-six acres and fifty-six hundredths of an acre. Southwest quarter, south half of northwest quarter, northwest quarter of northwest quarter, and lot number one of section twenty-one, containing three hundred and five acres and fifty hundredths of an acre. Lot number four of section twenty-three, containing fifteen acres and forty-one hundredths of an acre.

Township ten, range seven.

North half and southwest quarter, west half of southeast quarter of section one, containing five hundred and ninety acres and thirty hundredths of an acre. North half of northeast quarter, northeast quarter of northwest quarter, southeast quarter of northeast quarter, and northeast quarter of southeast quarter of section eleven, containing two hundred acres. Lots numbered one and two (fractional north half of

northeast quarter) of section thirteen, containing fifty-eight acres and forty-five hundredths of an acre.

Township twelve, range seven.

Southeast quarter of section twenty-one, containing one hundred and sixty acres. South half of northeast quarter and northwest quarter of northeast quarter of section twenty-nine, containing one hundred and twenty acres. All of section thirty-three, containing six hundred and forty acres.

Township thirteen, range seven.

West half of northwest quarter, south half of southeast quarter, and lots numbered one, two, three, four, five, six, seven, and eight of section twenty-nine, containing three hundred and five acres and thirty-nine hundredths of an acre. North half and southwest quarter, north half of southeast quarter, southwest quarter of southeast quarter, and lot number one of section thirty-one, containing six hundred and fourteen acres and seventy-five hundredths of an acre.

The said tracts, as described in the foregoing pages from two to twenty-two, inclusive, containing the aggregate area of (120,237 46-100) one hundred and twenty thousand two hundred and thirty-seven acres and forty-six hundredths of an acre.

Now, know ye that the United States of America, in consideration of the premises and pursuant to the said acts of Congress, have given and granted, and by these presents do give and grant, unto the said Oregon and California Railroad Company, of Oregon, and to its successors, all the tracts of land described in the foregoing.

To have and to hold the same, with the appurtenances, unto the said Oregon and California Railroad Company, of Oregon, and to its successors and assigns, forever.

In testimony whereof I, Ulysses S. Grant, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, this twelfth day of July, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States the ninety-sixth.

By the President.

[SEAL.]

U. S. GRANT.

By J. PARRISH, *Secretary*.

By C. B. BOYNTON,

Recorder of the General Land Office.

(Endorsed:) Filed Feb. 3, 1893. R. H. Lamson, clerk.

In the United States circuit court, ninth district.

THE UNITED STATES, PLAINTIFF,

vs.

THE OREGON AND CALIFORNIA RAILROAD
Company et al., defendants.

No. 1982.

Testimony taken before F. S. Lafferty, examiner.

Before F. S. Lafferty, special examiner; Hon. D. R. Murphy, United States district attorney, appearing for plaintiff, and Messrs. Bronaugh, McArthur, Fenton and Bronaugh, for defendants.

244 ROBERT A. HABERSHAM, sworn on behalf of plaintiff:

Direct examination. Questions by Mr. MURPHY:

Q. State your name, residence, and occupation.

A. Robert A. Habersham; Portland, Oregon; civil engineer.

Q. How long have you been a civil engineer?

A. I began in 1857—thirty-seven years.

Q. You have been following the occupation of civil engineer for the last thirty-seven years?

A. I have.

Q. Are you acquainted with the topography of the country north of the 45th parallel of latitude, and up to the British line?

A. Not up to the British line.

Q. How far north do you know the topography of the country?

A. From Pasco, on the Northern Pacific, to Puget Sound and up to Bellingham Bay, within six miles of the British boundary, and south of that.

Q. What is the character of the country?

Mr. FENTON. I object to that as incompetent, irrelevant, and immaterial. I suppose objections can be reserved.

Mr. MURPHY. This is all taken subject to objection.

Q. What is the character of the country north of the 45th parallel of latitude?

A. It is mountainous and heavily timbered from a line on the east watershed of the Cascade Range westward to the coast. From that line eastward it is mountainous and not timbered generally.

Q. You may state what feasible and practical routes there are for a railroad with its terminus at or near Portland, in the State of Oregon, from a point three hundred miles east of Puget Sound.

(Same objection.)

A. Well, as an engineer, I would say the best line was down the Columbia, on the banks of the Columbia as nearly as practicable.

Q. Could a railroad, from a point three hundred miles east of Puget Sound to Portland, run in any other line than down one of the banks of the Columbia?

A. Yes, sir.

Q. How could that railroad arrive at Portland?

A. From my knowledge of the Cascade Range south of Stampede Pass, partly from personal knowledge by railway surveys, and partly from maps made by other engineers, I think that the best route—well, there are two routes, I can not say which is best, one I am not very familiar with—there are two routes, one from Pasco up into and through the Klickitat Valley westward through Camas prairie down the Lewis River to the east fork at Louisville; thence across to the banks of the Columbia at La Camas; thence crossing the Columbia and coming down. There is a better place to cross at Lady's Island than to come down to Vancouver. The other route would be to leave the Northern Pacific at North Yakima

and come up Attahanan Creek to Cispus Pass; thence on a ridge line to Klickitat Pass, and from there down the same as the route I have described from the Klickitat to the Columbia.

Q. How far east of Portland is La Camas?

A. About sixteen or eighteen miles.

Q. Would either of these routes that you have described reach Portland by way of the valley of the Columbia?

A. Not through its entire length.

Q. How much of the line would be located in the valley of the Columbia?

A. It depends upon what you call the valley of the Columbia. The portion adjacent to the river varies in width from a mile to four, five, or six miles sometimes, but if you call all of the watershed that drains into the Columbia a portion of the valley, then it extends from Klickitat Pass down to the mouth of the Lewis River. That is not, however, usually called the valley of the river, but the watershed, the drainage basin.

Q. You may describe the valley of the Columbia from Portland eastward to Pasco?

A. It is some five or six miles wide at Vancouver; across to the peninsula, between three and six miles, it varies considerably, and then it narrows until about at the Cascade gorge it is only six or seven hundred feet wide; above that it varies in width; above the Cascades from a quarter of a mile to half a mile to three-quarters. It is mountainous on both sides from the Sandy River up to Wallula; there the east bank is not so precipitous, and above Pasco I do not, of my personal knowledge, know anything.

Q. About how far east of Portland is Pasco?

247 A. About two hundred and forty-five miles in longitude, just looking at the map.

Q. How far north of the Columbia River are these two routes, the two routes that you have described?

A. Cispus Pass is about sixty and Klickitat Pass about forty to forty-five by this map.

Q. That is miles?

A. From forty to forty-five the Klickitat and sixty Cispus Pass by this map.

Q. What route do you consider the most eligible railroad route from a point three hundred miles east of Puget Sound to Portland?

A. For cheapness of operation, the line down the Columbia River.

Q. Following either the north or south bank?

A. Yes, sir. For cheapness of construction I have never made any comparative estimate.

Mr. MURPHY, Plaintiff now offers in evidence map of the States of Washington and Oregon and part of Idaho, marked "Map of the Department of the Columbia," projected and compiled by the Engineer's Office, Department of the Columbia, by Lt. Thomas W. Symons, and ask to have the same marked. Marked "Plaintiff's Exhibit A, Oct. 22d, '94."

Cross-examination. Questions by Mr. FENTON:

Q. Where would your line through the Cispus Pass that you speak of go with reference to the Lewis River?

A. I did not run any line.

Q. I mean the line in your testimony?

248 A. The Cispus Pass is at the head of Cowlitz River; to go to Lewis River, the line from Cispus Pass would have to be a ridge line running along the top of the mountains, more or less, to Klickitat

Pass, and thence down Lewis River, down the North Fork of Lewis River.

Q. Where does the Cowlitz River empty into the Columbia River?

A. About six miles below Kalama.

Q. Where is Kalama with reference to Portland?

A. Thirty-eight miles by the steamboat channel.

Q. In what direction?

A. Northwest. Let me answer that correctly. [Refers to map.] Kalama is almost due north from Portland—a little west of north.

Q. Then a practical route for a railroad passing through Cispus Pass might be brought down the Lewis River if it were extended along the ridge as you say?

A. So I am informed by the engineer who made the reconnoissance.

Q. From your general knowledge of the general topography of Washington and of the streams of water that put into the Columbia on the north side, whose head waters rise in the Cascade Mountains, what would be your judgment independent of any hearsay?

A. My judgment as to what?

Q. As to the feasibility of such a route.

A. There is no doubt that such a route can be built and operated.

Q. When you speak of the Cowlitz River rising in Cispus Pass
249 can you say whether the route might not follow the Cowlitz River in its general course to the Columbia?

A. I am not familiar with that part of the country. The question of practicability and engineering is a question of money.

Q. Where does the Cowlitz River empty into the Columbia?

A. At what is called Kelso, about six miles north of Kalama; that is, just below Carroll's Point, on the Columbia.

Q. Then if it is still further west than Kalama would it be from Portland west or north?

A. It is still farther north. Monticello I meant to mention as the town at the mouth of the Cowlitz.

Q. Would there be any difficulty in maintaining this road from the mouth of the Cowlitz River or Lewis River either from the north bank of the Columbia River and thence across to Portland; I mean in an engineering sense?

A. The road would come from Kalama, if it came down the Cowlitz to the north bank of the Columbia to Vancouver and across there, or if it came down the Lewis River it would come out a little above St. Helens and above the north bank of the Columbia to Vancouver, the same as the other one, or it would cross at Kalama or other points.

Q. Or it would cross at Kalama or other points as now, crossing to the south bank of the Columbia and to Portland?

A. Yes, sir; it could. I had not thought of that as coming into my question.

250 Q. What can you say as to the number of passes in the Cascade Mountains between the Columbia River and the British line, the north boundary line of the United States?

A. The Northern Pacific in 1872 surveyed through, beginning at the British boundary and enumerating southward, as nearly as I can remember, surveyed lines through Skagitt Pass, Snoqualmie Pass, and south of

the Snoqualmie Pass is the Stampede Pass—whether they surveyed this pass I don't know—and south of Stampede Pass are Cispus and Klickitat passes, and there is a pass about ten miles south of Klickitat Pass, but it is higher, and has never been given any consideration at all.

A. You say that what constitutes the valley of the Columbia depends upon what those words mean. Is it not true that when applied to a territory of country drained by a great river and its tributaries that it applies to the watersheds, including the various tributaries, rather than to the gorge through which the main river finds its way to the sea?

A. Geographically the term valley is used frequently to include the whole draining basin or watershed; in engineering terms, it means the vicinity of the river.

Q. Well, what is the valley of the Columbia River between Kalama and Astoria?

A. You mean its character?

Q. Yes; what is it? What extent of country would it be as defined by you?

A. Well, it depends upon how the term valley is used. Its drainage basin would be from the crest of the ridge on both sides; but speaking generally of the river, the Columbia has no valley—no valley land. It is a term difficult to discriminate with.

Q. Is it not true, as a matter of fact, popularly speaking, that the Columbia River from its confluence with the Snake River to its mouth, the Pacific Ocean, has no valley in the sense in which the word is used ordinarily?

A. There is little or no valley land.

Q. Is it not true, that for the greater part of its distance the water of this river passes through what properly might be called a gorge, and that for a distance of one hundred miles east of Portland it passes through a gorge situated in the Cascade Mountains with no valley either side of its waters?

A. Yes.

Q. East of this point, which, for convenience, we will note as The Dalles, and to Pasco, or the mouth of the Snake River, is it not true, that the Columbia is still located in a gorge of the mountains rising on either side almost immediately from the water's edge, or with tributaries from either side emptying into it through deep gorges, with plateaus on either side of such tributaries extending a considerable distance from the Columbia River?

A. Plateaus.

Q. Elevated tracts of lands on either side of its tributaries?

A. I did not understand the last part of your question.

Q. (Question read.)

A. In this reach of the river, between The Dalles and Pasco, there are jutting points, notably one at what is called Hell Gate, just above Celilo; but a large portion of its extent the land rises back from the river at a comparatively easy slope, so that it is good agricultural land, lacking only irrigation. Above Umatilla, on the Oregon side, there are precipitous bluffs, and there are others smaller at points below on the river—I say from Celilo up to Pasco. From The

Dalles to Wallula, except two or three miles near The Dalles, it is almost precipitous—almost vertical.

Q. Can you give any idea of the elevation above the river of these plateaus or tracts of land?

A. The rock at Hell Gate I measured, and that is about one hundred and twenty feet, as near as I remember, vertically. The basaltic cliffs which flank the river at points between Celilo and Pasco, vary in height two or three, four or five hundred feet, some of them, and there is generally a bench between the cliff and the river, as at Grant Station.

Q. What is the width of this bench, ordinarily?

A. Oh, it varies from twenty-five to fifty, to one hundred, to five hundred feet.

Q. Is it continuous or broken?

A. It is broken at several points; I don't remember.

Q. What is the topography of the watershed of the river on its north bank, in so far as the mountains and bluffs are concerned, between The Dalles and Pasco?

A. It is not so rough on the north side as it is on the south side. It has ravines running along at short intervals, half a mile, a mile, or two miles, heading up into the Simeoe Ridge, which separates the valley of the Yakima from the Columbia proper.

251½ Q. Where does this ridge first begin to rise, with reference to the water of the Columbia River?

A. Simeoe Ridge is a spur of Mt. Adams, running east of it and east of Klickitat Pass. All the streams that flow from the Simeoe Ridge run into the Columbia on its north bank.

Q. Then there is no valley proper immediately next to the north side of the Columbia River?

A. Very little of what is called valley land, agriculturally, and with the exception of Klickitat Valley, which is upon a ridge from six hundred to twelve hundred feet above the river, a large flat extent of country, known, part of it, as the Horse-heaven country, and all of it included in the Klickitat Valley.

Q. All the Klickitat Valley is on either side of what is called the Klickitat River, which puts into and is a tributary of the Columbia?

A. That is the Klickitat Valley proper, but they extend the name east as far as Cleveland and Bickleton.

Q. What is the topography of the country lying up the river beyond Pasco and up towards the British line?

A. Of my own knowledge, I can not say.

Q. In illustrating the extent of a valley, I will ask you if you would not, in your definition of a valley, include in the Willamette Valley the Yamhill Valley and its tributaries?

A. It is generally so included.

Q. In speaking of your opinion that for cheapness of operation the road down the Columbia River gorge, along the river, would be practical and profitable, did you mean to include the item of maintenance

252 in the operation, or did you merely mean that of construction? It might be more cheaply operated without regard to renewals or maintenance.

A. Maintenance is one of the items of operation.

Q. In your definition?

A. In railroad terms; you can not operate a railroad unless you maintain it. The cost of construction should be regulated with regard to obtaining of a permanent roadbed, and it is sometimes necessary to do very expensive work in order not to have to do it all over again whenever a flood or other occurrence of like nature happens.

Q. Do you know, as a fact, that the track between Portland and Umatilla Junction, owned and operated by the Oregon Railway and Navigation Company and located on the south bank of the Columbia River, has, during the current year, been largely destroyed by floods of the Columbia River?

(Objected to as immaterial.)

A. I know it as the public know it. I have not been over the line since then, but I have no doubt of it.

Q. From your knowledge of the river, and of the extent of the flood, have you any doubt as to the destruction of the track where it was located, and where it was best to locate it in great part by reason of the flood?

A. Have I any doubt of it?

Q. Yes, sir.

A. Well, from what I heard, and I have not heard it denied, a large portion of it has been destroyed.

Q. Would you not obviate any danger to the destruction of the railroad track, and its operation, by choosing either of those routes mentioned by you, and avoiding the route down the Columbia River?

A. To some extent, to a great extent, yes; but there might occur floods on the Lewis River which would carry away a considerable portion of the road also. You can not provide absolutely against any danger.

Q. There would not be such an extent of road liable to be flooded on the Lewis River road, would there be?

A. The banks of the Columbia could be made safe from flood, or any other river, by building the road higher up, where no flood short of a deluge could reach it. It is just a question of the grade of the road.

Q. Do you know, of your own knowledge, as an engineer or otherwise, of the dangerous character of landslides along the line of railroad, which have occurred in the Columbia River gorge, called the Cascades?

A. On which side of the river?

Q. On the side where the railroad is now located and operated by the O. R. & N. Co.

A. Yes, sir; I do.

Q. Does not that present to your mind an objection to this route difficult to overcome, and an objectionable feature to the location of a road at that point?

A. I surveyed and located the Northern Pacific Railroad from Bonneville to Portland in 1872, and in 1874 I surveyed the site where they are now building the Cascade locks, on both sides of the river, giving the same attention to both sides, and from the Cascade locks down to Bonneville the whole superstructure on the Oregon side rests on an inclined plane

of sandstone, slippery, and I noted, from the size of the locks down to Warrendale, where a big slide occurred, and remember going back into the mountains for the purpose of examining the stability or probable stability of the soil. I noticed cracks running along longitudinally with the river bank, showing this portion of it slipping into the river had been going on for centuries, probably. At this place particularly, where the big slide occurred at Warrendale, I went a quarter of a mile back from the river for the purpose of examining that carefully, and I so reported in my report to the chief engineer that putting a railroad there they were going to have trouble. I can say I saw no indications of slides on the Washington side.

Q. Did you not discover any indications of a landslide on the north bank of the Columbia River, opposite the cascades on the mountain?

A. None of any extent near the river. There were evident landslides which are visible a mile or two back in the mountains, at a great elevation.

Q. What is the fact as to beneficial features, if any exist, with reference to those two routes you have named for a railroad, in regard to local business, or country through which it passes supporting and maintaining the road?

A. A railroad through the Klickitat Valley, from Pasco to Trout Lake, would get very little more freight than it would down the edge of the Columbia; from Trout Lake up through Klickitat Pass down to the Lewis River and across to the Columbia it would have an immense logging business, and also transportation of coal, which exists in large quantities along the line. There would be little or no business for a railroad on the north bank of the Columbia; that is, local business, from White Salmon down to Washougal, not that I know of.

Redirect examination:

Q. You may state as to whether or not the flood to which counsel referred as destroying a portion of the road along the bank of the Columbia River was an ordinary or an extraordinary event.

A. It was an extraordinary—the highest flood on record.

Q. Do you know whether or not the floods prior to that time had submerged or destroyed any portion of the O. R. & N. track anywhere between here and Umatilla?

A. During high water I was told by the engineers that one trestle located in an eddy had been carried away by the foundations being cut out from under it, and I do not remember, except perhaps some little occasional breakage, of any serious damage to the railroad line by any previous flood.

Q. How long has that railroad been constructed there?

A. It was constructed about—well, about eleven years ago, I believe, when Mr. Villard came here.

Excused.

R. A. HABERSHAM.

356 In the circuit court of the United States, ninth circuit.

THE UNITED STATES OF AMERICA, PLAINTIFF, }
vs.
 THE OREGON AND CALIFORNIA RAILROAD COMPANY }
 et al., defendants.

Stipulation.

Pursuant to stipulation, the parties hereto appearing by their counsel, Hon. Daniel R. Murphy, United States district attorney, and Hon. John M. Gearin, representing the United States, and Hon. L. E. Payson and Hon. W. D. Fenton, representing the defendant, appeared before F. S. Lafferty, special examiner, on this 13th day of December, 1894, in the United States court building, and thereupon the following proceedings were had on behalf of the defendant:

It was thereupon stipulated by the parties hereto that all questions as to the relevancy and competency of the evidence offered at this hearing be considered reserved.

MR. PAYSON. We offer first a certified copy of letter from the Interior Department, dated August 4th, 1870, signed Edwin F. Johnson, and addressed to Hon. J. D. Cox, Secretary of the Interior.

(Received and marked "Defendants' Exhibit B.")

257

Defendants' Exhibit B.

NORTHERN PACIFIC RAILROAD COMPANY,

ENGINEER'S OFFICE,

120 Broadway, New York, Aug. 4, 1870.

Hon. J. D. COX, Sec'y of Interior.

DEAR SIR: From information received from my assistants in Montana and Idaho since my return here from Washington, it is probable the Northern Pacific Railroad Company may wish to vary the location of that portion of their line situated between the mouth of Boulder Creek on Jefferson River, in Montana, and the Columbia River.

There is reason to fear that the valley of the Salmon River may be found impracticable, in which case the company will be compelled to take the next valley to the north of it—the Clearwater.

The president of our company is absent for some days in Minnesota, and I desire you not to take any action on the portion of the route named until he returns, or I can communicate with him.

Yours, very respectfully,

EDWIN F. JOHNSON,
Engr. in Chf. N. Pacific R. R.

Certificate in pursuance of section 882 of the Revised Statutes, attached, certifying to true copy of original on file in Interior Department, dated August 7, 1894, signed by Wm. H. Sims, Acting Secretary of the Interior, and under seal of the Interior Department.

258 Mr. PAYSON. We next offer copy of resolutions of the board of directors of the Northern Pacific Railroad Company, attested by George H. Earl, and certificate of Edward A. Bowen, dated August 9th, 1894.

(Received and marked "Defendants' Exhibit C.")

Defendants' Exhibit C.

Exhibit B. On Mr. Fargo's motion it was

"Resolved, That the president cause a preliminary location, with a map of the main road of the Northern Pacific Railroad Company, commencing at Whatecom, on Puget Sound, thence running southerly on the easterly side of the said sound to Portland, in Oregon, and from the point where the said road crosses the Columbia River, and on the north side thereof and by the valley of the said river to the mouth of the Snake River, to be filed in the office of the Secretary of the Department of the Interior at Washington at as early a day as practicable. Also to cause a like preliminary location, with a map of the main line from the point on the Red River where the said road may cross the said river, running thence to the Missouri River at the point of intersection of the Yellowstone with the Missouri, and thence up the valley of the Yellowstone to a point in the Rocky Mountains, which shall be common to a line to be run either down the valley of the Salmon River or the Clearwater River, and to file said map with the Secretary of the Interior at Washington."

I, George H. Earl, secretary of the Northern Pacific Railroad Company, hereby certify that the foregoing is a true copy of a resolution adopted by the executive committee of the board of directors of
259 said company on July 8, 1870, as appears in the records of the proceedings of said company.

In witness whereof I have hereunto set my hand and the seal of said company this 2nd day of May, 1893.

[SEAL.]

GEO. H. EARL,

Secretary of the Northern Pacific R. R. Co.

Exhibit C (continued).

Meeting of October 26, 1870. Present, Messrs. Smith, Rice, Fargo, Felton, Wright.

The president presented and read the following statement of the transactions of the company since the last meeting of the board of directors:

"Location of the line: In July last a map was prepared showing a located line of our road from Montreal River, on Lake Superior, to a point in Washington Territory opposite the mouth of the Walla Walla River. The line was thus laid down on the map as an approximate line only, and with the approbation of the Secretary of the Interior, and with the understanding that, as the located line of our road was made from actual surveys, the company might have the privilege of changing the line so as to conform to the actual location, and hold the lands granted according to such final survey.

"With this understanding, the map, with the line above described traced upon it, was filed in the Department of the Interior, and the request made that the lands granted should be withdrawn by the Department.

Subsequent to the filing of the map, and before any action was taken thereon by the Department, the engineer in chief, having received from the engineers in the field in the valley of the Salmon River intelligence that that route proved impracticable for a road owing to its deep canyons, notified the Secretary of the Interior that so much of said line in Montana and Idaho as pertained to the Salmon River route was withdrawn, and requesting no action by the Department thereon. Notice was afterwards received by me from the Secretary of the Interior that our map was received and filed, and that the lands to the extent of twenty sections per mile in Minnesota and Oregon and Washington Territory were withdrawn up to Steilacoom, but that the Department objected to withdrawing lands to the boundary line. Afterwards, in a letter, the Secretary consents to withdraw the land to Seattle to the extent of twenty sections to the mile."

I, George H. Earl, secretary of the Northern Pacific Railroad Company, hereby certify that the foregoing is a true copy of an extract from the record of the proceedings of the executive committee of the board of directors of said company, at a meeting thereof held on the 26th day of October, 1870.

In witness whereof I have hereunto set my hand and the official seal of said company this 2nd day of May, 1893.

[SEAL.]

GEO. H. EARL,

Secretary Northern Pacific R. R. Co.

Certificate of true copy of original papers on file in the General Land Office, dated August 9, 1894, signed by Edward A. Bowen, Acting Commissioner of the General Land Office, and seal of General Land Office attached.

Mr. PAYSON. We next offer a copy of a letter dated August 5th, 1870, signed "J. D. Cox, Secretary," addressed to Edwin F. Johnson, under certificate of August 7th, 1894.
(Received and marked "Defendants' Exhibit D.")

Defendants' Exhibit D.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., August 5th, 1870.

Sir: I have received your letter of the 2nd and 4th instant, the first relating to the legislation as to the main line and branch of the Northern Pacific Railroad, and the second stating it may be necessary to change the route of the road in Idaho from the valley of the Salmon River to that of the Clearwater, and asking suspension of action on that portion of the map until you can advise with the president of the company. In reply, I state that I see no objection to a compliance with your request, and action will be accordingly suspended.

Very respectfully, your obedient servant,

J. D. COX, *Secretary.*

EDWIN F. JOHNSON,

Engr. in Chief, N. P. R. R. Co., 120 Broadway, New York.

Certificate of true copy of original on record in Interior Department, dated August 7th, 1894; seal of Department attached and signed by Wm. Sims, Acting Secretary of the Interior, attached to foregoing.

262 Mr. PAYSON. We next introduce affidavit of J. Gregory Smith, before George T. Childs, notary public, under certificate of Edward A. Bowen, dated August 9th, 1894.
(Received and marked "Defendants' Exhibit E.")

Defendants' Exhibit E.

EXHIBIT E. STATE OF VERMONT,
County of Franklin, ss:

J. Gregory Smith, being duly sworn, deposes and says: That he is a resident of the State of Vermont; that during 1870, 1871, and 1872 he was president of the Northern Pacific Railroad Company, and as such had personal supervision and charge of arranging for and filing with the Secretary of the Interior the maps of the Northern Pacific Railroad; that the map of said road, filed August 13, 1870, was filed with the Secretary of the Interior with the express understanding between the said Secretary and the Northern Pacific Railroad Company, that the line designated upon said map was an approximate line only of the map of the general route, and that the same might be changed thereafter, provided the company ascertained from actual survey, or otherwise, that the route marked on said map was impracticable; that the company, after the making of such arrangements and filing said map, did find the route designated thereon impracticable, and before the Secretary of the Interior had acted thereon, and before the approval of said map, and in pursuance of said agreement and arrangements entered into as aforesaid, the company

263 notified the Secretary of the Interior of the impracticability of said route, and of its withdrawal of said map as to so much of said line as was located in Western Montana, Idaho, and to the Columbia River, in Washington; that at the time of filing of said map it was distinctly understood, as aforesaid, that if the company found the said route, or any portion of it, impracticable, the company might withdraw said preliminary map and file a map of general route, and that in pursuance of said agreement and understanding the Northern Pacific Railroad Company did, on the 21st day of February, 1872, file its map of general route, and the then Secretary of the Interior, in pursuance of the agreement and understanding aforesaid, and under the authority then vested in him, did receive for filing and did approve said map so filed on the 21st day of February, 1872, and deponent further says that on the 26th day of October, 1870, as president of the Northern Pacific Railroad Company, he made to said company a report in the words and figures following, to wit:

"In July last a map was prepared showing a located line of our road from Montreal River, on Lake Superior, to a point in Washington Territory opposite the mouth of the Walla Walla River. The line was thus laid down on the map as an approximate line only, and with the approbation of the Secretary of the Interior, and with the understanding that as the located line of our road was made from actual surveys the company might have the privilege of changing the line so as to conform to the actual location and hold the lands granted according to such final survey. With this understanding the map with the line

264 above described traced upon it was filed in the Department of the Interior, and the request made that the lands granted should be

withdrawn by the Department. Subsequent to the filing of the map and before any action was taken thereon by the Department, the engineer in chief having received from the engineers in the field, in the valley of the Salmon River, intelligence that that route proved impracticable for a road owing to its deep canyons, notified the Secretary of the Interior that so much of said line in Montana and Idaho as pertained to the Salmon River route was withdrawn and requesting no action by the Department thereon. Notice was afterwards received by me from the Secretary of the Interior that our map was received and filed and that the lands to the extent of 20 sections per mile in Minnesota and Oregon and Washington Territory were withdrawn up to Steilacoom, but that the Department objected to withdrawing lands to the boundary line. Afterwards in a letter the Secretary consents to withdraw the lands to Seattle to the extent of 20 sections to the mile."

That the facts set forth in said report are true.

J. GREGORY SMITH.

STATE OF VERMONT,

County of Franklin, ss:

At St. Albans, in said county, on this 20th day of May, A. D. 1890, personally appeared J. Gregory Smith, to me known, who made oath that the foregoing statement by him subscribed was true according to his best knowledge, information, and belief.

Before me:

[SEAL.]

GEO. T. CHILDS, *Notary Public*.

265 Certificate of true copy of affidavit on file in General Land Office, dated August 9th, 1894, under seal of General Land Office and signed by Edward A. Bowen, Acting Commissioner of the General Land Office attached.

Mr. PAYSON. We next offer certain papers, the first being headed "Department of the Interior, Washington, D. C., October 12th, 1870," under certificate of Edward A. Bowen, Acting Commissioner of the General Land Office, dated August 9th, 1894.

(Received and marked "Defendants' Exhibit F.")

Defendants' Exhibit F.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Oct. 12th, 1870.

SIR: I transmit herewith an affidavit of the president and engineer in chief of the Northern Pacific Railroad Company, with a map designating the route of said company's road through Minnesota.

The company, as shown by this map, have changed the route of their road in Minnesota.

The withdrawal heretofore ordered you will cause to be made to conform to the route designated on the map, and the lands now withdrawn and not within twenty miles of this route to be restored.

Very respectfully, your obedient servant,

J. D. COX, *Secretary*.

Hon. JOS. WILSON,

Commissioner of the Gen'l Land Office.

266 (Indorsement:) Letter 1 J, 19893. Dept. of the Interior, Secretary. Oct. 12, 1870. Division 13, 63. Transmits aff'dt of the president & engineer in chief of the N. P. R. R. Co. Also map designating the route of said company, and directs that the withdrawal of lands be made to conform with the route designated. (R) Minnesota Immediate. Ref'd to Div. "F." Reed. (G. L. O.) October 13, 1870.

STATE OF NEW YORK,

County of New York, ss:

YORK CITY, *October 1st, 1870.*

Edwin F. Johnson, of the city, county, and State of New York, deposes and says that he is the engineer in chief of the Northern Pacific Railroad Company, and that he has been such engineer in chief since June, A. D. 1866.

That during the period above mentioned surveys and explorations have been made on various portions of the route proposed for said road for determining its proper location, and that on the thirtieth day of July last, by direction of the board of directors of said railroad company, a written description of an approximate location, with a map or maps duly certified, was filed with the Secretary of the Interior at his office in Washington. Whereupon said Secretary, in accordance with the provisions of the Government grant to the said company, ordered the withdrawal from sale, preemption, homestead, and other disposal of the odd-numbered sections for twenty miles on either side of the location of said road as filed in the States of Wisconsin, Minnesota, and

267 Oregon, and in the Territory of Washington as far north as Seattle, omitting the Territories of Dakota, Montana, Idaho, and the portion of Washington north of Seattle.

The said railroad company having by recent surveys and examinations attained to a more correct knowledge of the country, and finding that the location of their road filed by them, as above stated, is not adapted throughout in the best manner to the ground, desire to amend their said approximate location by substituting therefor a line or lines better adapted, it is believed, to the purposes of the company and the public, and in consequence of the following amendments to and changes in the location referred to have been made and approved by the board of directors of said railroad company, as appears on the records of said company, viz:

Commencing at a point in the location, as filed in the State of Minnesota, one and one-half ($1\frac{1}{2}$) miles south of the northwest corner of township forty-eight (48), range sixteen (16), in Carleton County; thence on a direct course westwardly through said Carleton and Itasca counties to the northwest corner of township one hundred and thirty-five (135), range twenty-nine (29) west, a distance of about ninety-six (96) miles.

Thence on a due west course following the line of the township, numbered one hundred and thirty-five (135) and one hundred and thirty-six (136) through Cass and Wadena counties to the southwest corner of township one hundred and thirty-six (136), range thirty-nine (39) west, in Ottertail County, a distance of about sixty (60) miles. Thence in a

268 direct course northwestwardly through Ottertail, Becker, Clay, and Polk counties to a point in the latter county where the north line of townships numbered one hundred and forty-four (144)

meets the Red River at the western boundary of Minnesota, a distance of about eighty-one (81) miles.

The location as filed of the line of the Northern Pacific Railroad from the point above-named, one and one-half miles south of the northwest corner of township forty-eight (48), range sixteen (16) west, in Carleton County, Minnesota, to the Red River, near Georgetown, is hereby withdrawn and the above-described line substituted instead.

The line withdrawn and the line substituted are represented on the accompanying map, entitled "Map exhibiting amendment of line of location of Northern Pacific Railroad in Minnesota. October, 1870."

EDWIN F. JOHNSON,
Engineer in Chief N. Pacific R. R.

STATE OF NEW YORK,
City and County of New York, ss:

Subscribed and sworn to before me this sixth day of October, 1870.

[SEAL.]

W. N. GOODARD,
Notary Public, Co. of N. Y.

It is hereby certified that in pursuance of the act of Congress approved July 2, 1864, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound on the Pacific coast, by the northern route," and the several acts amendatory thereto:

269 The Northern Pacific Railroad Company, organized in accordance with said act, did, on the second day of July, ult., approve of an approximate location of the line of their road, and caused the same to be filed in the office of the Secretary of the Interior on the thirtieth of said July; since which date the said company, from information derived from surveys made under their direction, and from information which they believe to be reliable, otherwise obtained, have deemed it their duty to vary the approximate location of the line of their road in the places and to the extent specified above; which changes or variations were approved by a vote of the directors of the said company on the 29th day of Sept., as by the record of the said company duly appears.

New York City, Oct. 1st, 1870.

J. GREGORY SMITH, *President.*
EDWIN F. JOHNSON,
Eng. in Chf. N. Pac. R. R.

Certificate of true copy of original papers on file in Department of Interior, dated August 9th, 1894, under seal of Department, and signed by Edwin A. Bowen, Acting Commissioner of the General Land Office, attached.

Mr. PAYSON. We next offer letter dated October 7th, 1870, from Edwin F. Johnson to Hon. J. D. Cox, and certificate of William H. Sims, Acting Secretary of the Interior, dated August 7th, 1894.

(Received and marked "Defendants' Exhibit G.")

270

Defendants' Exhibit G.

NORTHERN PACIFIC RAILROAD COMPANY,
ENGINEER'S OFFICE,
120 Broadway, New York, October 7th, 1870.

Hon. J. D. COX, *Secretary of the Interior.*

DEAR SIR: I am directed by the president of the Northern Pacific Railroad Company to forward to your office the enclosed certificate of location of the Northern Pacific R. R. in Minnesota. The certificate enclosed is an amendment of the line of the company's road in Minnesota, and is a substitute in part of the location filed in your office on the 30th of July last, as will appear on examination.

Yours, very respectfully,

EDWIN F. JOHNSON,
Eng. in Chf. N. Pacific R. R.

Please inform me when the order for the above change is issued.

Certificate of true copy of original letter on file in Department of the Interior, dated August 7th, 1894, under seal of Department, signed by William H. Sims, Acting Secretary of the Interior, attached.

MR. PAYSON. We next offer a letter dated October 12th, 1870, from Hon J. D. Cox to Edwin F. Johnson, under certificate of William H. Sims, Acting Secretary of the Interior, dated August 7th, 1894.

(Received and marked "Defendants' Exhibit H.")

271

Defendants' Exhibit H.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., October 12th, 1870.

SIR: I have received your letter of the 7th inst., and the accompanying affidavit and map. The latter you ask to have substituted for so much of the map heretofore filed as shows the designated route of the Northern Pacific Railroad through Minnesota, and that the withdrawal in that State may be made to conform to the route shown on this map.

In reply, I have to state that I have this day sent the map and affidavit to the Commissioner of the General Land Office, with directions to have the withdrawal made to conform to the line shown on this map. The route designated on the map is all within the limits of the withdrawal heretofore made, and as a change of the lines of withdrawal causes much trouble and inconvenience, not only to the General Land and the local offices, but to settlers, I hope the company will be able to avoid the necessity of any further changes, except upon the final definite location of the route.

Very respectfully, your obedient servant,

J. D. COX, *Secretary.*

EDWIN F. JOHNSON, Esq.,
Engr. in Chf. N. Pac. R. R. Co., 120 Broadway, New York.

272 Certificate of true copy of original letter of record in Department of Interior, dated August 7th, 1894, under seal of Department, and signed by William H. Sims, Acting Secretary of the Interior, attached.

Mr. PAYSON. We next offer letter of February 16th, 1872, from J. Gregory Smith to Hon. C. Delano, Secretary of the Interior, under certificate of William H. Sims, Acting Secretary of the Interior, of date August 7th, 1894.

(Received and marked "Defendants' Exhibit I.")

Defendants' Exhibit I.

NORTHERN PACIFIC RAILROAD COMPANY,
PRESIDENT'S OFFICE,
120 Broadway, New York, Feb. 16th, 1872.

Hon. C. DELANO, *Secretary of the Interior, Washington, D. C.*

DEAR SIR: I have the honor to transmit herewith a map of the preliminary line of road of this company from the Red River of the North to the Columbia, at the mouth of the Walla Walla River, and to request that the lands pertaining to said route may be withdrawn from settlement and sale.

I have the honor to be, very respectfully, your obdt. servant,
J. GREGORY SMITH, *President.*

Certificate of true copy of original on file in Department, dated August 7th, 1894, under seal of Department and signed by William H. Sims, Acting Secretary of the Interior, attached.

273 Mr. PAYSON. We now offer certified copy of letters under certificate of Edward A. Bowen, Acting Commissioner of the General Land Office, certificate dated August 9th, 1894.

(Received and marked "Defendants' Exhibit K.")

Defendants' Exhibit K.

DEPARTMENT OF THE INTERIOR, RAILROADS,
Washington, D. C., 21st Feby., 1872.

SIR: I transmit herewith for appropriate action a map of the preliminary route of the Northern Pacific Railroad (received yesterday, with letter of 16th inst., from J. Gregory Smith, esq., pres. of the co.) from the crossing of the Red River of the North at Fargo, in Dakota, to a point opposite the mouth of the Walla Walla River, Washington Territory, a distance of about 1,448 miles.

Very respectfully, your ob't servant,

C. DELANO, *Secretary.*

P. S.—Before you take final action please confer with the Department.

C. DELANO, *Secy.*

Hon. WILLIS DRUMMOND, *Commr. G. L. O.*

(Endorsed:) 1 82649. Hon. Sec. of the Interior. Feby. 21, 1872. Map of the preliminary route of the N. P. R. R. &c. No. ans. req., lands withdrawn. Feby. 22.

ENGINEER'S DEPARTMENT,
New York, February 16th, 1872.

NORTHERN PACIFIC R. R.:

274 I certify that the line of railroad as laid down on this map shows the general route of the "Northern Pacific Railroad" from our locations and surveys, made personally or by my assistants, up to this date, from the crossing of the "Red River of the North," in Dakota Territory, to a point opposite the mouth of the Walla Walla River, comprising about fourteen hundred and forty-eight miles, and that this line indicates, as nearly as it is now practicable to show it, the route that we anticipate will be finally accepted for that portion of the main line of the Northern Pacific Railroad.

W. MILNOR ROBERTS,
Chief Engr. Northern Pacific Railroad.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
March 30, 1872.

REGISTER AND RECEIVER, Pembina, Dakota Ter.

GENTLEMEN: I transmit herewith diagram showing the designated route of the Northern Pacific Railroad, under act of July 2nd, 1864, and by direction of the Secretary of the Interior you are directed to withhold from sale or location, preemption or homestead entry, all the surveyed and unsurveyed odd-numbered sections of public lands falling within the limits of 40 miles, as designated on this map.

You will also increase in price to \$2.50 per acre the even-numbered sections within those limits, and dispose of them at that ratability and under the preemption and homestead laws only, no private entry
275 of the same being admissible until these lands have been offered at the increased price.

This order will take effect from the date of its receipt by you, and you are requested to acknowledge, without delay, the time of its receipt.

Very respectfully,

W. W. CURTIS,
Acting Commissioner.

Receipt ack. April 22, '72, "9" 97, 526.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
April 15th, 1872.

REGISTER AND RECEIVER, Lewiston, Idaho Ter.

GENTLEMEN: I transmit herewith diagrams showing the designated route of the Northern Pacific Railroad, under act of July 2d, 1864, and by direction of the Secretary of the Interior you are directed to withhold from sale or location, preemption or homestead entry, all the surveyed and unsurveyed odd-numbered sections of public land falling within the limits of 40 miles, as designated on this map.

You will also increase in price to \$2.50 per acre the even-numbered sections within those limits, and dispose of them at that ratability and

under the preemption and homestead laws only, no private entry of the same being admissible until these lands have been offered at the increased price.

276 This order will take effect from the date of its receipt by you, and you are requested to acknowledge without delay the time of its receipt.

Very respectfully,

W. W. CURTIS,
Acting Commissioner.

Receipt ack. April 29, '72, "1," 96, 745.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
April 22, 1872.

REGISTER & RECEIVER, *Helena, M. T.*

GENTLEMEN: I transmit herewith diagram showing the designated route of the Northern Pacific Railroad, under the act of July 2d, 1864, and by direction of the Secretary of the Interior you are hereby directed to withhold from sale or location, preemption or homestead entry, all the surveyed and unsurveyed odd-numbered sections of public lands falling within the limits of 40 miles, as designated on this map.

You will also increase in price to \$2.50 per acre the even-numbered sections within these limits, and dispose of them at that ratability and under the preemption laws only, no private entry of the same being admissible until these lands have been offered at the increased price.

This order will take effect from the date of its receipt by you, and you are requested to acknowledge without delay the time of its receipt.

Very respectfully,

WILLIS DRUMMOND,
Commissioner.

Receipt ackd. May 6th, 1872, 1, 97, 123.

277 Certificate of true copy of original papers and letters on file in Department of the Interior, dated August 9th, 1884, under seal of Department, and signed by Edward A. Bowen, Acting Commissioner of the General Land Office, attached.

MR. PAYSON. We next offer letter dated February 21st, 1872, signed C. Delano, Secretary, addressed to J. Gregory Smith, under certificate of William H. Sims, Acting Secretary of the Interior, of date August 7th, 1894.

(Received and marked "Defendants' Exhibit L.")

Defendants' Exhibit L.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., 21st Feb.

SIR: I am in receipt of your letter of the 16th instant, and the accompanying map of the preliminary route of the Northern Pacific Railroad from the crossing of the Red River of the North, at Fargo, in Dakota, to

a point opposite the mouth of the Walla Walla River, Washington Territory, a distance of about 1,448 miles, and have to inform you that said map has been forwarded to the Commissioner of the General Land Office.

Very respectfully,
J. GREGORY SMITH, Esq.,
Pres. of the Company, 120 Broadway, N. York.

C. DELANO, *Secretary.*

Certificate of true copy of original record in Department of Interior, dated August 7th, 1894, under seal of Department, and signed by William H. Sims, Acting Secretary of the Interior, attached.

278 Mr. PAYSON. We next offer certified copy of Senate Executive Document Number 120, second session 46th Congress.

(Received and marked "Defendants' Exhibit M." The same is printed and too long to be set forth.)

Mr. PAYSON. We next offer certified copy of public document, the first page of which is entitled "Statements showing land grants made by Congress to aid in the construction of railroads, and so forth," offering the title-page and pages 14 and 15, and the certificate thereto, as evidence here.

(Received and marked "Defendants' Exhibit N.")

Mr. PAYSON. I next offer post-route map of the States of Oregon and Washington, prepared by the Postmaster-General of the United States, Wilson S. Bissell.

(Received and marked "Defendants' Exhibit O.")

Mr. PAYSON. I also offer official map entitled "Department of the Interior, General Land Office, the Honorable Thomas H. Carter, Commissioner of the State of Washington for 1891."

(Received and marked "Defendants' Exhibit P.")

It was thereupon admitted between the parties that the line of road of the Northern Pacific Railroad Company as shown upon map marked "Defendants' Exhibit P" from the point Ainsworth to Tacoma, commencing at Pasco, by way of North Yakima, Swamp Creek, Eagle Gorge, and South Prairie, to Tacoma, has been constructed and is in operation by the Northern Pacific Railroad Company.

279 GEORGE H. ANDREWS, sworn on part of the defendants:

Direct examination. Questions by Mr. FENTON:

Mr. Andrews, what official position do you sustain to the Oregon and California Railroad Company?

A. Secretary and acting land agent.

Q. For how long have you been acting as such?

A. Since 1884.

Q. In whose custody are the books containing the contracts of sale of lands of the Oregon & California Railroad Company granted to it by the act of Congress of July 25th, 1866?

A. Mine.

Q. Examine Exhibit A attached to the answer of the defendant' filed in this suit June 25th, 1894, and state what that exhibit shows, and whether or not it correctly shows the sales of land made on behalf of the Oregon & California Railroad Company as belonging to this grant to

them to the limits involved in this suit, if you know. Please state what it shows.

A. It shows the date of the sales of the lands mentioned in the schedule, and a description of the lands.

Mr. PAYSON. What is the name of it?

Mr. FENTON. It does not give it. There is much within the overlapping limits of the Northern Pacific Railroad Company and the Oregon & California Railroad Company to be ascertained by the Government, as we claim in this suit.

The WITNESS. Yes, sir; claimed by the Government in this suit; in this bill of complaint—the lands mentioned in this bill of complaint.

280 Q. Does this Exhibit A show the date respectively note the acreage respectively, and the description of the acreage of all the lands sold by the Oregon & California Railroad Company that are involved in this suit?

A. It does.

Q. From what source of information did you obtain the data stated in this exhibit?

A. From personal knowledge and examination of the books; from the books of the company and from the records of sales.

Q. You have verified it with the books of the company and know it accurately states the condition of the same?

A. Yes, sir.

Q. Examine the paper now shown you, purporting to be map No. 1 of western Oregon, showing the lands of the Oregon & California Railroad Company, and state what the same is and what the lines, if any, indicate. The claimed limits of the Northern Pacific Railroad Company as overlapping the grant of the Oregon & California Railroad Company. Explain the map fully. State first what it is.

A. This is a map published by the Oregon & California Railroad Company. The line shaded blue—I presume that can be called blue—shows the twenty-mile limits of the grant to the Oregon & California Railroad Company. The line shaded yellow shows the thirty-mile limit of the grant to the Oregon & California Railroad Company.

Q. What is it that shows the so-called overlapping of the Northern Pacific Railroad Company's grant?

A. The red line.

281 Q. At right angles to these?

A. Practically right angles—by slightly shaded reds with the words "N. P. R. R."

Q. Were those made by you?

A. No.

Q. Under your direction?

A. Yes, sir; under my direction, in the clerk's office.

Q. Where is the forty-mile limit? How is that shown?

A. That is shown by the green line.

Q. In ink or in pencil?

A. Yes, sir; marked "Forty mile, N. P. R. R."

Q. What do the red inks and squares show, as located on this map within the limits of the Oregon & California Railroad Company's grant, both twenty and thirty miles?

A. The patented lands.

Q. Were those sections and parts of sections verified by an examination of the patents, respectively, and put by you, or under your direction, on this map?

A. Under my direction.

Q. And were they verified with the patent?

A. Yes, sir; they were verified.

Q. Now, you may state, Mr. Andrews, from your knowledge of the topography of the country described upon this map, whether or not it is an accurate description of it, the location of the city of Portland, the Columbia River on the Oregon side, the Willamette River, the line of the Oregon & California Railroad Company, and the various streams, sections, townships, and ridges indicated upon the map—whether it is an accurate map.

A. It is considered a very accurate map—as accurate as it can be made.

282 Q. Are you acquainted with the location of Portland?

A. Yes, sir.

Q. And you see what indicates the name Portland on the map. It also locates the Columbia River—and from your knowledge what do you say as to its being accurate?

A. It is quite accurate—the location of the Columbia River and Portland. It is the mountain streams that probably might not be accurate running through the sections.

Q. Where is Vancouver, as indicated on this map?

A. Northeast from Portland.

Q. About how far?

A. About six or seven miles.

Q. On the north side of the Columbia River?

A. Yes, sir.

Mr. FENTON. We now offer the map as part of the witness' deposition and testimony, and ask to have the same filed as Exhibit Q.

(Received and marked "Defendants' Exhibit Q.")

Mr. GEARIN. I suppose our reservation as to the relevancy and competency of all this testimony gets in our objection?

Mr. PAYSON. Why, certainly.

Mr. FENTON. I think this will probably close our case, but we may want to introduce some further testimony.

Mr. GEARIN. All right.

(Endorsed:) No. 1982. United States circuit court, district
283 of Oregon. The United States vs. The Oregon & California
R. R. Co. et al. Testimony taken before Mr. F. S. Lafferty,
examiner. Filed Dec. 20, 1894. J. A. Sladen, clerk.

M. C. P.

Defendants' Exhibit B.

A. M.
E. H. H.

UNITED STATES OF AMERICA.

(Vignette.)

DEPARTMENT OF THE INTERIOR,

Washington, D. C., Aug. 7, 1894.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original on file in this Department.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed the day and year first above written.

[SEAL.]

WM. H. SIMS,
Acting Secretary of the Interior.

Department of the Interior, Aug. 5, 1870.]

NORTHERN PACIFIC RAILROAD COMPANY,
ENGINEER'S OFFICE,
120 Broadway, New York, Aug. 4, 1870.

Hon. J. D. COX, *Sec'y of Interior.*

DEAR SIR: From information received from my assistants in Montana and Idaho since my return here from Washington, it is probable the Northern Pacific Railroad Company may wish to vary the location of that portion of their line situated between the mouth of Boulder Creek on Jefferson River in Montana and the Columbia River.

284 There is reason to fear that the valley of the Salmon River may be found impracticable, in which case the company will be compelled to take the next valley to the north of it—the Clearwater.

The president of our company is absent for some days in Minnesota, and I desire you not to take any action on the portion of the route named until he returns or I can communicate with him.

Yours, very respectfully,

EDWIN F. JOHNSON,
Engr. in Chief, N. Pacific R. R.

(Endorsed:) U. S. vs. O. & C. R. R. Co. Deft. Ex. B. Dec. 12, '94.
F. S. Lafferty, special exm. Filed Dec. 13, 1894. J. A. Sladen, clerk.

F.
H. W. H.

Defendants' Exhibit C.

W. J. M.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,
Washington, D. C., Aug. 9, 1894.

I, Edw. A. Bowers, Acting Commissioner of the General Land Office, do hereby certify that the annexed copy of resolution of board of directors of the Northern Pacific Railroad Company of July 8, 1870, and certified copy of the proceedings of board of directors of said company of Oct. 26, 1870, being Exhibits B and C in the records of the case of Charles Cole vs. N. R. R. Co., are true and literal exemplifications of the original papers on file in this office.

285 In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

EDW. A. BOWERS,
Acting Commissioner of the General Land Office.

Exhibit B. On Mr. Fargo's motion it was resolved: That the president cause a preliminary location, with a map of the main road of the Northern Pacific Railroad Company, commencing at Whatcom, on Puget Sound; thence running southerly on the easterly side of the said Sound

to Portland, in Oregon, and from the point where the said road crosses the Columbia River, and on the north side thereof and by the valley of the said river to the mouth of the Snake River, to be filed in the office of the Secretary of the Department of the Interior at Washington at as early a day as practicable. Also to cause a like preliminary location, with a map of the main line from the point on the Red River where the said road may cross the said river; running thence to the Missouri River at the point of intersection of the Yellowstone with the Missouri, and thence up the valley of the Yellowstone to a point in the Rocky Mountains, which shall be common to a line to be run either down the valley of the Salmon River or the Clearwater River, and to file said map with the Secretary of the Interior at Washington.

I, George H. Earl, secretary of the Northern Pacific Railroad Company, hereby certify that the foregoing is a true copy of a resolution adopted by the executive committee of the board of directors of said company on July 8, 1870, as appears in the records of the proceedings of said company.

286 In witness whereof I have hereunto set my hand and the seal of said company this 2d day of May, 1893.

GEO. H. EARL,
Secretary Northern Pacific R. R. Co.

Exhibit C (continued).

Meeting of October 26, 1870.

Present, Mess. Smith, Rice, Fargo, Felton, Wright.

The president presented and read the following statement of the transactions of the company since the last meeting of the board of directors:

"Location of the line: In July last a map was prepared showing a located line of our road from Montreal River on Lake Superior to a point in Washington Territory opposite the mouth of the Walla Walla River. The line was thus laid down on the map as an approximate line only, and with the approbation of the Secretary of the Interior, and with the understanding that, as the located line of our road was made from actual surveys, the company might have the privilege of changing the line so as to conform to the actual location, and hold the lands granted according to such final survey.

"With this understanding, the map with the line above described traced upon it was filed in the Department of the Interior, and the request made that the lands granted should be withdrawn by the Department. Subsequent to the filing of the map, and before any action was taken thereon by the Department, the engineer in chief, having received from the engineers in the field in the valley of the Salmon River intelligence that that route proved impracticable for a road, owing to its

287 deep canons, notified the Secretary of the Interior that so much of said line in Montana and Idaho as pertained to the Salmon River route was withdrawn, and requesting no action by the Department thereon. Notice was afterwards received by me from the Secretary of the Interior that our map was received and filed, and that the lands to the extent of twenty sections per mile in Minnesota and Oregon and Washington Territory were withdrawn up to Steilacoom, but that the

Department objected to withdrawing lands to the boundary line. Afterwards, in a letter, the Secretary consents to withdraw the lands to Seattle, to the extent of twenty sections to the mile."

I, George H. Earl, secretary of the Northern Pacific Railroad Company, hereby certify that the foregoing is a true copy of an extract from the record of the proceedings of the executive committee of the board of directors of said company, at a meeting thereof held on the 26th day of October, 1870.

In witness whereof I have hereunto set my hand and the official seal of said company this 2d day of May, 1893.

[SEAL.]

GEO. H. EARL,

Secretary Northern Pacific R. R. Co.

(Endorsed:) U. S. vs. O. & C. R. R. Co. Defts. Ex. C. Dec. 12, '94. F. S. Lafferty, special examiner. Filed Dec. 13, 1894. J. A. Sladen, clerk.

288 M. C. P.

Defendants' Exhibit D.

A. M.

E. H. H.

UNITED STATES OF AMERICA.

(Vignette.)

DEPARTMENT OF THE INTERIOR,

Washington, D. C., Aug. 7, 1894.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this Department.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed the day and year first above written.

[SEAL.]

WM. H. SIMS,

Acting Secretary of the Interior.

[E. F. JOHNSON, B. 3, p. 169, Nor. Pac. R. R.]

DEPARTMENT OF THE INTERIOR,

Washington, D. C., August 5th, 1870.

SIR: I have received your letters of the 2nd and 4th instant, the first relating to the legislation as to the main line and branch of the Northern Pacific Railroad, and the second stating it may be necessary to change the route of the road in Idaho from the valley of the Salmon River to that of the Clearwater, and asking suspension of action on that portion of the map until you can advise with the president of the company.

289 In reply, I state that I see no objection to a compliance with your request, and action will be accordingly suspended.

Very respectfully, your obedient servant,

J. D. COX, *Secretary.*

EDWIN F. JOHNSON,

Engr. in Ch'f. N. P. R. R. Co.,

120 Broadway, New York.

(Endorsed:) U. S. v. O. & C. R. R. Co. Defts. Ex. D. Dec. 12, '94. F. S. Lafferty, special exr. Filed Dec. 13, 1894. J. A. Sladen, clerk.

18747—10

F.
H. W. H.

Defendants' Exhibit E.

W. J. M.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Aug. 9, 1894.

I, Edw. A. Bowers, Acting Commissioner of the General Land Office, do hereby certify that the annexed copy of affidavit of J. Gregory Smith, formerly president of the Northern Pacific Railroad Company, dated May 20, 1890, and marked "Exhibit E" in the record of the case of R. E. Spicer et al. vs. N. P. R. R. Company, is a true and literal exemplification of the original paper on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

EDW. A. BOWERS,
Acting Commissioner of the General Land Office.

290

Exhibit E.

STATE OF VERMONT,

County of Franklin, ss:

J. Gregory Smith, being duly sworn, deposes and says that he is a resident of the State of Vermont; that during 1870, 1871, and 1872 he was president of the Northern Pacific Railroad Company, and as such had personal supervision and charge of arranging for and filing with the Secretary of the Interior the maps of the Northern Pacific Railroad; that the map of said road, filed August 13, 1870, was filed with the Secretary of the Interior with the express understanding between the said Secretary and the Northern Pacific Railroad Company that the line designated upon said map was an approximate line only of the map of the general route, and that the same might be changed thereafter, providing the company ascertained from actual survey or otherwise that the route marked on said map was impracticable; that the company, after the making of such arrangements and filing said map, did find the route designated thereon impracticable, and before the Secretary of the Interior had acted thereon, and before the approval of said map, and in pursuance of said agreement and arrangements entered into as aforesaid, the company notified the Secretary of the Interior of the impracticability of said route and of its withdrawal of said map as to so much of said line as was located in Western Montana, Idaho, and to the Columbia

291 River in Washington; that at the time of filing of said map it was distinctly understood, as aforesaid, that if the company found the said route, or any portion of it, impracticable, the company might withdraw said preliminary map and file a map of general route, and that in pursuance of said agreement and understanding the Northern Pacific Railroad Company did, on the 21st day of February, 1872, file its map of general route, and the then Secretary of the Interior, in pursuance of the agreement and understanding aforesaid, and under the authority then invested in him, did receive for filing and did approve said map so filed on the 21st day of February, 1872; and deponent further says that on the 26th day of October, 1870, as president of the Northern

Pacific Railroad Company, he made to said company a report in the words and figures following, to wit:

"In July last a map was prepared showing a located line of our road from Montreal River, on Lake Superior, to a point in Washington Territory opposite the mouth of the Walla Walla River. The line was thus laid down on the map as an approximate line only, and with the approbation of the Secretary of the Interior, and with the understanding that as the located line of our road was made from actual surveys the company might have the privilege of changing the line so as to conform to the actual location and hold the lands granted according to such final survey. With this understanding, the map with the line above described traced upon it was filed in the Department of the Interior, and the request made that the lands granted should be withdrawn by the Department. Subsequent to the filing of the map, and before any action was taken thereon by the Department, the engineer in chief, having received from 292 the engineers in the field in the valley of the Salmon River intelligence that that route proved impracticable for a road owing to its deep canons, notified the Secretary of the Interior that so much of said line in Montana and Idaho as pertained to the Salmon River route was withdrawn, and requesting no action by the Department thereon. Notice was afterwards received by me from the Secretary of the Interior that our map was received and filed, and that the lands to the extent of 20 sections per mile in Minnesota and Oregon and Washington Territory were withdrawn up to Steilacoom, but that the Department objected to withdrawing lands to the boundary line. Afterwards, in a letter, the Secretary consents to withdraw the lands to Seattle to the extent of 20 sections to the mile."

That the facts set forth in said report are true.

J. GREGORY SMITH.

STATE OF VERMONT,

County of Franklin:

At St. Albans, in said county, on the 20th day of May, A. D. 1890, personally appeared J. Gregory Smith, to me known, who made oath that the foregoing statement by him subscribed was true, according to his best knowledge, information, and belief.

Before me:

[SEAL.]

GEO. T. CHILDS, *Notary Public*.

(Endorsed:) U. S. vs. O. & C. R. R. Co. Defts. Ex. E. Dec. 12, 1894. F. S. Lafferty, special examiner. Filed Dec. 13, 1894. J. A. Shaden, clerk.

293 H. F. H.

Defendants' Exhibit F.

W. J. M.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., Aug. 9, 1894.

J. Edw. A. Bowers, Acting Commissioner of the General Land Office, do hereby certify that the annexed copy of letter of Secretary Cox of Oct. 12, 1870, to Commissioner Wilson, copy of affidavit of Chief Engineer Johnson, and copy of certificate of President Smith, officers of

Northern Pacific Railroad Company, and dated respectively Oct. 6 and 1, 1870, are true and literal exemplifications of the original papers on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

EDW. A. BOWERS,

Acting Commissioner of the General Land Office.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., Oct. 12th, 1870.

SIR: I transmit herewith an affidavit of the president and engineer in chief of the Northern Pacific Railroad Company with a map designating the route of said company's road through Minnesota.

The company, as shown by this map, have changed the route of their road in Minnesota.

The withdrawal heretofore ordered you will cause to be made
294 to conform to the route designated on this map, and the lands now withdrawn and not within twenty miles of this route to be restored.

Very respectfully, your obedient servant,

J. D. Cox, *Secretary.*

Hon. JOS. S. WILSON,

Commissioner of the Gen'l Land Office.

(Endorsement :) Letter 1 J 19893. Dept. of the Interior. Secretary. Oct. 12, 1870. Division 1363 transmits aff'd't of the president and engineer in chief of the N. P. R. R. Co. Also map designating the route of said company, and directs that the withdrawal of lands be made to conform with the route designated (R) Minnesota. Immediate. Ref'd to Div. "F." Recd. (G. L. O.) Oct. 13, 1870.

STATE OF NEW YORK,

County of New York, ss:

NEW YORK CITY, *October 1st, 1870.*

Edwin F. Johnson, of the city, county, and State of New York, deposes and says that he is the engineer in chief of the Northern Pacific Railroad Company, and that he has been such engineer in chief since June, 1866.

That during the period above named surveys and explorations have been made on various portions of the route proposed for said road for determining its proper location, and that on the thirtieth day of July last, by direction of the board of directors of said railroad company, a written description of an approximate location, with a map or maps duly certified, was filed with the Secretary of the Interior at his office
295 in Washington. Whereupon said Secretary, in accordance with the provisions of the Government grant to the said company, ordered the withdrawal from sale, preemption, homestead, and other disposal of the odd-numbered sections for twenty miles on either side of the location of said road as filed in the States of Wisconsin, Minnesota,

and Oregon, and in the Territory of Washington as far north as Seattle, omitting the Territories of Dakota, Montana, Idaho, and the portion of Washington north of Seattle.

The said railroad company, having by recent surveys and examinations attained to a more correct knowledge of the country, and finding that the location of their road filed by them, as above stated, is not adapted throughout in the best manner to the ground, desire to amend their said approximate location by substituting therefor a line or lines better adapted, it is believed, to the purposes of the company and the public, and in consequence the following amendments to and changes in the location referred to have been made and approved by the board of directors of said railroad company, as appears on the records of said company, viz:

Commencing at a point in the location, as filed in the State of Minnesota, one and one-half ($1\frac{1}{2}$) miles south of the northeast corner of township forty-eight (48), range sixteen, in Carleton County; thence on a direct course westwardly through said Carleton and Itasca counties to the northwest corner of township one-hundred and thirty-five (135), range twenty-nine west, a distance of about ninety-six (96) miles.

296 Thence on a due west course following the line of the township numbered one hundred and thirty-five (135) and one hundred and thirty-six (136) through Cass and Wadena counties to the southwest corner of township one hundred and thirty-six (136), range thirty-nine (39) west, in Ottertail County, a distance of about sixty (60) miles; thence on a direct course northwestwardly through Ottertail, Becker, Clay, and Polk counties to a point in the latter county where the north line of township numbered one hundred and forty-four (144) meets the Red River at the western boundary of Minnesota, a distance of about eighty-one (81) miles.

The location as filed of the line of the Northern Pacific Railroad from the point above named one and one-half miles south of the northwest corner of township forty-eight (48), range (16) sixteen west, in Carleton County, Minnesota, to the Red River near Georgetown, is hereby withdrawn and the above-described line substituted instead.

The line withdrawn and the line substituted are represented on the accompanying map, entitled "Map exhibiting amendment of line of location of Northern Pacific Railroad in Minnesota, October, 1870."

EDWIN F. JOHNSON,
Engineer in Chief N. Pac. R. R.

STATE OF NEW YORK,
City and County of New York:

Subscribed and sworn to before me this sixth day of October, 1870.

[SEAL.]

W. N. GOODARD,
Notary Public, Co. of New York.

07 It is hereby certified that in pursuance of the act of Congress approved July 2, 1864, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific Coast, by the northern route," and the several amendments thereto.

The Northern Pacific Railroad Company, organized in accordance with said act, did on the second day of July ult. approve of an approximate location of the line of their road, and caused the same to be filed in the office of the Secretary of the Interior on the thirtieth of said July. Since which date the said company, from information derived from surveys made under their direction and from information which they believe to be reliable otherwise obtained, have deemed it their duty to vary the approximate location of the line of their road in the places and to the extent specified above, which changes or variations were approved by a vote of the directors of the said company on the 29 day of Sept. inst., as by the record of said company duly appears.

J. GREGORY SMITH,
President.

EDWIN F. JOHNSON,
Eng. in Chf. N. Pac. R. R.

NEW YORK CITY, Oct. 1st, 1870.

(Endorsed:) U. S. vs. O. & C. R. R. Co. et al. Deft's Ex. F. Dec. 12, '94. F. S. Lafferty, special exr. Filed Dec. 13, 1894. J. A. Sladen, clerk.

298 M. C. P. *Defendants' Exhibit G.* A. M.
E. H. H.

UNITED STATES OF AMERICA.

(Vignette.)

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Aug. 7, 1894.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the original letter on file in this Department and of its endorsement.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed the day and year first above written.

[SEAL.]

WM. H. SIMS,
Acting Secretary of the Interior.

Department of the Interior, Oct. 8, 1870.]

NORTHERN PACIFIC RAILROAD COMPANY,
ENGINEER'S OFFICE,
120 Broadway, New York, Oct. 7th, 1870.

Hon. J. D. COX, *Secretary of the Interior.*

DEAR SIR: I am directed by the president of the Northern Pacific Railroad Company to forward to your office the enclosed certificate of location of the Northern Pacific R. R. in Minnesota. The certificate enclosed is an amendment of the line of the company's road in
299 Minnesota, and is a substitute in part of the location filed in your office on the 30th of July last, as will appear on examination.

Yours, very respectfully,

EDWIN F. JOHNSON,
Engr. in Chf. N. Pacific R. R.

* Please inform me when the order for the above change is issued.

* In lead pencil in original.

(Endorsed:) Northern Pac. Department of the Interior. Received Oct. 8th, 1870. Dated Oct. 7th, 1870. From Edwin F. Johnson, eng. in ch. N. Pac. R. R. Co., 120 Broadway, N. Y. Subject: Encloses map amending line of road in Minnesota, with statement of reasons for making the change. Action. Acks. and ordered withdrawal. Oct. 12, 1870. Registered 1-273. Filed. U. S. vs. O. & C. R. R. Co., et al. Defts. Ex. G. Dec. 12, '94. F. S. Lafferty, special exr. Filed Dec. 13, 1894. J. A. Sladen, clerk.

M. C. P.

Defendants' Exhibit H.

A. M.

E. H. H.

UNITED STATES OF AMERICA.

(Vignette.)

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Aug. 7, 1894.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this Department.

In testimony whereof I have hereunto subscribed my name and
300 caused the seal of the Department of the Interior to be affixed the day and year first above written.

[SE'L.]

WM. H. SIMS,

Acting Secretary of the Interior.

E. F. Johnson, B. 3, p. 258. Northern Pacific. Certificate and map.]

DEPARTMENT OF THE INTERIOR,
Washington, D. C., October 12th, 1870.

SIR: I have received your letter of the 7th inst. and the accompanying affidavit and map. The latter you ask to have substituted for so much of the map heretofore filed as shows the designated route of the Northern Pacific Railroad through Minnesota, and that the withdrawal in that State may be made to conform to the route shown on this map.

In reply I have to state that I have this day sent the map and affidavit to the Commissioner of the General Land Office, with directions to have the withdrawal made to conform to the line shown on this map. The route designated on the map is all within the limits of the withdrawal heretofore made, and as a change of the lines of withdrawal cause much trouble and inconvenience, not only to the General Land and the local offices, but to settlers, I hope the company will be able to avoid the necessity of any further changes, except upon the final definite location of the route.

Very respectfully, your obedient servant,

J. D. COX, *Secretary.*

EDWIN F. JOHNSON, Esq.,

Eng. in Chf. N. Pac. R. R. Co.,
120 Broadway, New York.

301 (Endorsed:) U. S. vs. O. and C. R. R. Co. Defts. Ex. H.
Dec. 12, '94. F. S. Lafferty, special exr. Filed Dec. 13, 1894.
J. A. Sladen, clerk.

M. C. P.

Defendants' Exhibit I.

A. M.
E. H. H.

UNITED STATES OF AMERICA.

(Vignette.)

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Aug. 7, 1894.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original on file in this Department.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed the day and year first above written.

[SEAL.]

WM. H. SIMS,
Secretary of the Interior.

Department Interior, Feb. 20, 1872.]

NORTHERN PACIFIC RAILROAD COMPANY,
PRESIDENT'S OFFICE,
120 Broadway, New York, Feb. 16, 1872.

Hon. C. DELANO,

Secretary of the Interior, Washington, D. C.

DEAR SIR: I have the honor to transmit herewith a map of the preliminary line of road of this company from the Red River of the
302 North to the Columbia, at the mouth of the Walla Walla River, and to request that the lands pertaining to said route may be withdrawn from settlement and sale.

I have the honor to be, very respectfully, your ob'd't serv't,

J. GREGORY SMITH, *President.*

(Endorsed:) U. S. vs. O. & C. R. R. Co. et al. Deft. Ex. I. Dec. 12, '94. F. S. Lafferty, special exr. Filed December 13, 1894. J. A. Sladen, clerk. By G. H. Marsh, deputy.

F.

Defendants' Exhibit K.

W. J. M.

H. W. H.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Aug. 9, 1894.

I, Edw. A. Bowers, Acting Commissioner of the General Land Office, do hereby certify that the annexed copy of letter of Secretary Delano, of Feb. 21, 1872, to Commissioner Drummond; copy of certificate of W. Milnor Roberts, chief engineer Nor. P. R. R. Company; copy of Acting Com'r's letter of March 30, 1872, to reg. & rec., Pembina, D. Ty.; copy of Act. Com'r's letter of Apr. 15, 1872, to reg. & rec., Lewiston, Idaho Ty., and copy of Com'r's letter of April 22, 1872, to reg. & rec., Helena, Montana Ty., are true and literal exemplifications of the original papers and letters on file in this office.

303 In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

EDW. A. BOWERS,
Acting Commissioner General Land Office.

DEPARTMENT OF THE INTERIOR, RAILROADS,
Washington, D. C., 21st Feby., 1872.

SIR: I transmit herewith, for appropriate action, a map of the preliminary route of the Northern Pacific Railroad (received yesterday, with letter of 16th inst. from J. Gregory Smith, esq., prest. of the co.,) from the crossing of the Red River of the North at Fargo, in Dakota, to a point opposite the mouth of Walla Walla River, Washington Territory, a distance of about 1,448 miles.

Very respectfully, your obedient servant,

C. DELANO, *Secretary.*

P. S.—Before you take final action please confer with the Department.

C. DELANO, *Secy.*

HON. WILLIS DRUMMOND, *Com. G. L. O.*

(Endorsed:) 1 82649. Hon. Sec. of the Interior. Feby. 21, 1872. Map of the preliminary route of the N. P. R. R. &c. No. ans. req. Lands withdrawn. F. Feb. 22, '72.

ENGINEER DEPARTMENT,
New York, February 16th, 1872.

NORTHERN PACIFIC RAILROAD:

304 I certify that the line of railroad as laid down on this map shows the general route of the "Northern Pacific Railroad" from our locations and surveys made personally or by my assistants, up to this date, from the crossing of the "Red River of the North" in Dakota Territory to a point opposite the mouth of the Walla Walla River, comprising about fourteen hundred and forty-eight miles, and that this line indicates, as nearly as it is now practicable to show it, the route that we anticipate will be finally adopted for that portion of the main line of the Northern Pacific Railroad.

W. MILNOR ROBERTS,
Chief Eng. Northern Pacific Railroad.

Address only the Commissioner of the General Land Office.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
March 30, 1872.

REGISTER & RECEIVER, *Pembina, Dakota Ter.*

GENTLEMEN: I transmit herewith diagram showing the designated route of the Northern Pacific Railroad, under act of July 2nd, 1864, and by direction of the Secretary of the Interior you are directed to withhold from sale or location, preemption, or homestead entry all the surveyed and unsurveyed odd-numbered sections of public lands falling within the limits of 40 miles, as designated on this map.

You will also increase in price to \$2.50 per acre the even-numbered sections within those limits, and dispose of them at that ratability, and under the preemption and homestead laws only, no private entry of the same being admissible until these lands have been offered at the increased price.

This order will take effect from the date of its receipt by you, and you are requested to acknowledge, without delay, the time of its receipt.

Very respectfully,

W. W. CURTIS,
Acting Commissioner.

Receipt ack. April 22, '72. "I," 97, 526.

Address only the Commissioner of the General Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
April 15th, 1872.

REGISTER AND RECEIVER,
Lewiston, Idaho Ter.

GENTLEMEN: I transmit herewith diagrams showing the designated route of the Northern Pacific Railroad, under act of July 2d, 1864, and by direction of the Secretary of the Interior you are directed to withhold from sale or location, preemption or homestead entry, all the surveyed and unsurveyed odd-numbered sections of public land falling within the limits of 40 miles, as designated on this map.

You will also increase in price to \$2.50 per acre the even-numbered sections within those limits, and dispose of them at that ratability, and under the preemption and homestead laws only, no private entry of the same being admissible until these lands have been offered at the increased price.

306 This order will take effect from the date of its receipt by you and you are requested to acknowledge without delay the time of its receipt.

Very respectfully,

W. W. CURTIS,
Acting Commissioner.

Receipt ack. April 29, '72. "I," 96, 745.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
April 22d, 1872.

REGISTER AND RECEIVER,
Helena, M. T.

GENTLEMEN: I transmit herewith diagram showing the designated route of the Northern Pacific Railroad, under the act of July 2d, 1864, and by direction of the Secretary of the Interior you are hereby directed to withhold from sale or location, preemption or homestead entry, all the surveyed and unsurveyed odd-numbered sections of public land falling within the limits of 40 miles, as designated on this map.

You will also increase in price to \$2.50 per acre the even-numbered sections within these limits, and dispose of them at that ratability, and under the preemption laws only, no private entry of the same being admissible until these lands have been offered at the increased price.

This order will take effect from the date of its receipt by you, and you are requested to acknowledge without delay the time of its receipt.

Very respectfully,

WILLIS DRUMMOND,
Commissioner.

Receipt ackd. May 6, 1872. "I," 97, 128.

307 (Endorsed:) U. S. vs. O. & C. R. R. Co. et al., defts. Ex. K.
Dec. 12/94. F. S. Lafferty, special exr. Filed Dec. 13, 1894.
J. A. Sladen, clerk.

M. C. P.

Defendants' Exhibit L.

A. M.
E. H. H.

UNITED STATES OF AMERICA.

(Vignette.)

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Aug. 7, 1894.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of the original as it appears of record in this Department.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed the day and year first above written.

WM. H. SIMS,
Acting Secretary of the Interior.

J. Gregory Smith. 8-151. Northern Pacific. Map preliminary route from Red River to Walla Walla.]

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Feb. 21st, 1872.

SIR: I am in receipt of your letter of the 16th instant and the accompanying map of the preliminary route of the Northern Pacific Railroad from the crossing of the Red River of the North, at Fargo, in Dakota, to a point opposite the mouth of the Walla Walla River, Washington Territory, a distance of about 1,448 miles, and have to inform you that said map has been sent to the Commissioner of the General Land Office.

Very respectfully,

C. DELANO,
Secretary.

J. GREGORY SMITH, Esq.,

Presd. of the Company, 120 Broadway, N. Y.

(Endorsed:) U. S. vs. O. & C. R. R. Co. Deft. Ex. L. Dec. 12, '94. F. S. Lafferty, special exr. Filed Dec. 13, 1894. J. A. Sladen, clerk.

Defendants' Exhibit M.

No. 3. N. P. R. R. maps. Sen. Ex. Doc. 120, 2/46 Cong. U. S. vs. O. & C. R. R. Co. Defts. Ex. M. Dec. 12, '94. F. S. Lafferty, special exr.

Extract from the Journal of the Senate of the United States, March 15, 1880.]

"The Vice-President laid before the Senate a letter of the Secretary of the Interior, communicating, in answer to a resolution of the Senate

of the 3d ultimo, information concerning the general lines of location of the Northern Pacific Railroad, the changes in said location, the lands withdrawn under the several locations, and the extent to which the rights of settlers have been affected, which was referred to the Committee on Public Land' and ordered to be printed."

I, William R. Cox, Secretary of the Senate of the United States, do hereby certify that the above is a true copy of so much of the
309 Journal of the Senate of March 15, 1880, p. 335, Forty-sixth Congress, second session, as relates to the presentation and reference to the Committee on Public Lands and printing of the letter therein referred to, and the annexed printed document, entitled Senate Ex. Doc. No. 120, Forty-sixth Congress, second session, is the official print of the said letter and accompanying documents, including six maps, as appears in vol. 4 of Senate Documents, 2d session, 46th Congress, Nos. 100 to 180, on file in the library of the Senate.

In witness whereof I have hereunto set my hand and caused the seal of the Senate to be affixed this fourteenth day of November, A. D. 1894.

[SEAL.]

WILLIAM R. COX, *Secretary*.

By H. B. McDONALD,

Asst. Journal Clk. U. S. S.

Senate Ex. Doc. No. 120, 46th Congress, 2d session.]

Letter from the Secretary of the Interior, communicating, in compliance with a resolution of the Senate of February 3, 1880, information concerning the general lines of location of the Northern Pacific Railroad, the changes in said location, the lands withdrawn under the several locations, and the extent to which the rights of settlers have been affected. March 15, 1880, referred to the Committee on Public Lands and ordered to be printed.

310

DEPARTMENT OF THE INTERIOR,

Washington, March 12, 1880.

SIR: In answer to Senate resolution of the 3d ultimo, calling for information concerning the general lines of location of the Northern Pacific Railroad, the changes in said location with the approval of this Department, the average distances between the original and amended lines, the lands withdrawn under the several locations, and the extent to which the rights of settlers have been affected by the changes of location, I have the honor to transmit herewith copy of report on the subject by the Acting Commissioner of the General Land Office, and the accompanying maps.

Very respectfully,

C. SCHURZ, *Secretary*.

THE PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., March 8, 1880.

SIR: I have the honor to acknowledge the receipt on the 4th ultimo, by reference from the Department, on that day, for report to you thereon, of Senate resolution of the 3d ultimo, as follows:

"Resolved, That the Secretary of the Interior be, and he is hereby, directed to communicate to the Senate the general lines of location of the

311 Northern Pacific Railroad Company, and what changes, if any, have been made by said company in their general line of location and approved by the Department since their organization to the present date, giving the average distance, respectively, between such several lines of location and the extent and general character of such changes; also a statement of the lands withdrawn from settlement in favor of said company under the several locations made, and to what extent such several changes of location have affected the rights of settlers."

The following statement will show the several lines of location as indicated by the maps filed by the company with all the action had thereon. For convenience, the maps and the lines shown by each will be considered in connection with the several separate States and Territories through which they pass or within which they lie.

WISCONSIN.

Map showing the general line of route from the initial point at the mouth of the Montreal River, on Lake Superior, in township 47 north, range 1 west, of 4th principal meridian; thence southwesterly to the southwest corner of township 47 north, range 4 west; thence northwesterly to a point on the west line of the State, in township 48 north, range 15 west. Accepted by the Department August 13, 1870. The odd-numbered sections undisposed of within twenty miles of said line ordered to be withdrawn, and the even-numbered sections within said limits held for disposal at the double minimum price, by letter from this office to registers and receivers dated September 15, 1870. There has never been any definite location of this portion of the line, nor any further action in reference thereto.

312

MINNESOTA.

Map of general line of route from a point on the eastern boundary of the State, in township 48 north, range 16 west, fourth principal meridian; thence in a straight line southwesterly to the northwest corner of township 136 north, range 38 west, fifth principal meridian; thence in a straight line northwesterly to the western boundary of the State in township 142 north, range 48 west. Accepted by the Department August 13, 1870. Odd-numbered sections within 20 miles of said line ordered to be withdrawn by letters to registers and receivers dated September 15, 1870, and even sections increased in price.

Map showing change in general line of route. It shows a line diverging from the foregoing at a point on the west line of township 48 north, range 18 west, fourth principal meridian; thence in a straight line to a point at the northwest corner of township 135 north, range 49 west, fifth principal meridian; thence in a straight line to a point at the northwest corner of township 135 north, range 39 west, and thence in a straight line northwesterly, crossing the former line to the western boundary of the State, in township 144 north, range 48 west. At the northwest corner of township 135 north, range 29 west, this changed line is about six miles south, and at the western boundary of the State it is about 15 miles north from the former line. Accepted by the Department October 12, 1870. The withdrawal was, by letters of November 7, 1870, to

registers and receivers, ordered to conform to the changed line, the new lands affected included, and the proper lands restored to settlement and entry.

313 Map showing constructed line from a junction with the Lake Superior and Mississippi Railroad in township 48 north, range 16 west, fourth principal meridian, and running westerly through townships 48 north, ranges 17, 18, 19, and part of 20 west, part of 49 north, 20 west, 48 north, 21, 22, 23, and 24 west, 47 north, 25, 26, and 27 west, 46 north, 28 and 29 west, and 45 north, 30 west, fourth principal meridian, to Brainerd; thence through townships 133 north, 28, 29, 30, 31, 32, and 33 west, 134 north, 34, 35, and 36 west, 135 north, 37 west, 136 north, 38 and 39 west, 137 north, 39 west, 138 north, 40 west, 139 north, 40, 41, 42, 43, 44, 45, 46, 47, and 48 west, of fifth principal meridian, to the western boundary of the State. Received with Department letter of November 21, 1871. It was accepted as the definite location of the road and treated accordingly, no previous evidence of such location having been presented. By letters to registers and receivers of December 12th, 16, and 26, the odd sections within 40 miles of said line were withdrawn from settlement and entry, and the even sections within 20 miles thereof held as double minimum, the even sections in the 20 miles limits of the former withdrawal falling without like limits by this line being reduced to minimum. This line of definite location is distant from the general line of October 12, 1880, about 6 miles on an average, considering the whole line through Minnesota.

Maps of the constructed road, with profile thereof, approved by the President of the United States, were received with the Secretary's letter of January 6, 1873.

314 From the eastern boundary of the State to the initial point of the constructed road, as described, the line has not been definitely located, so far as I am advised.

DAKOTA.

Map of general line of route from a point west of and opposite township 142 north, range 48 west, Minnesota, on the eastern boundary of the Territory, in a straight line, northwesterly, to Minniwaukan or Devil's Lake; thence in a straight line southwesterly to the western boundary of the Territory at a point about 20 miles east of the Yellowstone River. Received with Secretary's letter of August 13, 1870. This portion of the line shown on said maps was not accepted by the Department, and no action was taken concerning it.

Map of general line of route from Fargo, nearly due west, to the western boundary of the Territory, accepted by the Department February 21, 1872. Withdrawal of odd sections within 40 miles of said line ordered by letters to registers and receivers dated March 30, 1872, and even sections increased in price to \$2.50 per acre.

Map of definite location of the line of route, showing the line as constructed from Fargo to the Missouri River, opposite Fort Lincoln. Accepted by the Department May 26, 1873. It shows a line south of, but at no point more than 6 miles distant from, the line of 1872, as last above described. A withdrawal was ordered on this line June 11, 1873,

of odd sections within 50 miles, the even sections within 40 miles held as double minimum, and the even sections within 50 miles, which were in the 40 miles limits, by the line of 1872, reduced to minimum.

315 Map of constructed line from Fargo to the Missouri River approved by the President of the United States. Received with letter from the Secretary of the Interior, dated December 2, 1873. The line shown agrees with that of the definite location.

From the Missouri River to the western boundary of the Territory there has been no definite location of the line, so far as any evidence has been filed.

MONTANA.

Map of general lines of route from a point on the eastern boundary of the Territory about 20 miles east of the Yellowstone River, which river it crosses at a point about 20 miles westerly from said boundary; thence on the north side of said river and along its general course, crossing it at a point about 20 miles east of the Bighorn River; thence along the south side of the Yellowstone to a point about 20 miles east of Fort Ellis; thence to Fort Ellis, and thence, in a general southwesterly course, to the western boundary of the Territory. This line was not accepted by the Department, and no action was taken concerning it. Received with Secretary's letter of August 13, 1870.

Map of general line of route from a point on the eastern boundary of the Territory, about three miles north of Glendwes Creek, and along that creek to the Yellowstone River; thence along the south side of the Yellowstone, crossing it at the junction of the Powder River; thence along the north side of the Yellowstone to a point about 20 miles east of

316 Fort Ellis; thence to Fort Ellis, and thence, in a general north and west course, to the western boundary of the Territory at a point east from Lake Pend d'Oreille in Idaho. Accepted by the Department February 21, 1872. The odd sections within 40 miles of this line

were ordered to be withdrawn by letter, dated April 22, 1872, the even sections within the same limits being increased to the double minimum price. There has been no definite location of this portion of the line, nor any change in the withdrawal.

IDAHO.

Map of general line of route, main line, from a point on the eastern boundary of the Territory, about twenty miles northeasterly from the mouth of the Beaver River, southwesterly to the mouth of said river; thence, following the general course of the Salmon River to a point about 15 miles easterly from the junction thereof with the Snake or Lewis River; thence northwesterly about 30 miles to the Snake or Lewis River, the western boundary of the Territory. Received with Secretary's letter of August 13, 1870. The line was not accepted by the Department, and no action was taken concerning it.

Map of general line of route, main line, from a point on the eastern boundary of the Territory, due east from Laked Pend d'Oreille; thence north and west around said lake, and thence southerly and westerly to a point on the western boundary of the Territory west of said lake.

Accepted by the Department February 21, 1872. Odd sections within 40 miles of said line withdrawn by letter of April 15, 1872, and even sections increased to double minimum price.

317 Map of proposed branch line, and showing general line thereof from Lake Pend d'Oreille westerly along the general course of Clark's Fork of the Columbia River, and to the western boundary of the Territory at a point about 20 miles south of where said fork crosses said boundary. Accepted by the Department August 20, 1873. Odd sections withdrawn by letter of November 1, 1873, within 40 miles of said branch line, not previously withdrawn from the main line, and the proper lands in even sections increased in price. This branch line has been abandoned and a branch beginning in Washington Territory substituted, as will be seen further on. By letter of October 28, 1876, the above withdrawals were amended or modified, and the proper lands restored to settlement and entry and reduced to the minimum price.

WASHINGTON TERRITORY.

Map of general line of route, main line, from a point on the eastern boundary of the Territory and about 10 miles north from the Oregon line; thence in a straight line and slightly southwest to Wallula, on the Columbia River; also map of general route, main line, from the mouth of the Walla Walla River, via the Columbia River, on the north side thereof, to a point in township 7 north, range 2 west; thence northerly to township 17 north, 2 west; thence northeasterly to township 21 north, 4 east; thence north to township 27 north, 4 east; thence northeasterly to township 30 north, 5 east; thence northwesterly to township 37 north, 3 east; and thence northwesterly to township 40 north, 1 east, the north boundary of the Territory. Accepted by the Department August 13, 1870. September 20, 1870, registers and receivers in Washington Territory and Oregon were directed to withdraw the lands within 20 miles of said line, i. e., the odd sections, and to hold the even sections in said limits at the double minimum price. November 21, 1870, there was ordered an additional withdrawal, to include the odd sections within 40 miles of said line in Washington Territory as far north as the north line of township 25 north. By telegrams dated February 9 and 10 and letters dated February 14, 1872, there were ordered withdrawn the odd sections within 40 miles from the south lines of townships 26 north to Whatcom, in the Territory, and all the odd sections within 40 miles in Oregon, the even sections in said limits throughout being increased in price.

Map changing the general line of route, main line, from eastern boundary of the Territory to the north of the Walla Walla River accepted by the Department February 21, 1872, commencing on the eastern boundary a little south of west from Lake Pend d'Oreille, in Idaho; thence southerly and westerly to the mouth of Lewis Fork of the Columbia, or Snake, River; thence crossing the Columbia River, and along the west side thereof southerly to the mouth of the Walla Walla River, where it joins the old or first line. By letters dated March 30, 1872, and April 15, 1872, the lands theretofore withdrawn, falling outside from 40 miles of this new line, were restored, and the new lands

falling within said limits were withdrawn or increased in price, according as same were odd or even sections. The point at which this new line enters the Territory is about 108 miles north of the point at which the line of 1870 crossed the eastern boundary, and the average distance between the two lines is something more than 50 miles.

Map of constructed main line from Kalama northeasterly 65 miles, accepted by the President of the United States, received with letter from the Department dated September 12, 1873; and map of constructed main line from terminus of the foregoing to Tacoma, 40.1 miles, accepted by the President, received with letter from the Department dated May 14, 1874. By letters of January 21 and November 12, 1874, the line having been thus definitely located from Kalama to Tacoma, registers and receivers in Washington Territory and Oregon were instructed to withdraw the odd sections within 50 miles thereof. The even sections between the 40 and 50 miles were not affected in any way. The line as constructed is, as nearly as might be, on the general line accepted in 1870.

Map of general route, branch line, from a point on the eastern boundary west from Lake Pend d'Oreille, in Idaho; thence westerly and southerly to the Columbia River, which it crosses at a point which, if surveyed, would, approximately, in township 20 north, range 22 east; thence northerly and westerly to a point which, surveyed, would be in township 32 north, 10 east; and thence southerly and westerly to Tacoma, in township 21 north, 3 east. Accepted by the Department August 20, 1873. Withdrawal ordered, in 40 miles limits, October 6 and November 1, 1873; certain lands north of Tacoma theretofore withdrawn on account of main line being restored.

Map of amended general route, branch line, accepted by the Department November 24, 1876. Beginning at the main line at the west side of the Columbia River and at the south side of the Yakima River, it follows, in a generally westerly course, the Yakima, Naches, and Puyallup rivers to Tacoma. No action was taken on this map, and it need not be further considered. It was superseded by—

Map of amended general route, branch line, accepted by the Department June 11, 1879, beginning at a point on the main line, in township 15 north, range 32 east; running southwesterly it crosses the Columbia River at Priests Rapids, in township 14 north, range 23 east; thence across the Cascade Mountains via the Cowlitz Pass, south of Mount Rainier, to Tacoma. The average distance between this line and that of 1873, which it supersedes (no withdrawal having been made on the line of 1876), is something more than 50 miles. A withdrawal of odd sections within 40 miles of this last amended line was ordered July 3, 1879, where same were not already withdrawn, and the even sections increased to the double minimum price. The lands theretofore withdrawn on the former branch line, and falling more than 40 miles from the new line, were ordered restored to settlement and entry at the minimum price and the proper even sections reduced accordingly.

Thus, in Wisconsin, on to the beginning of the constructed line in Minnesota, the land within 20 miles of the general line of 1870, and from thence to the western boundary of the State of Minnesota within 40

321 miles of the constructed line, stand withdrawn as to the odd sections for the benefit of the grant and the even sections within twenty miles have been held subject to entry at \$2.50 per acre under the pre-emption and homestead laws. In Dakota the odd sections within 50 miles of the constructed line westward to the Missouri River and within 40 miles of the general line of 1872, from the Missouri River to the western boundary are withdrawn, and the even sections within 40 miles throughout have been held as double minimum. In Montana and Idaho the odd sections within 40 miles of the general line of 1872 are withdrawn, and the even sections have been held as double minimum. And in Washington Territory and Oregon the odd sections within 40 miles of the general lines of route, main line and branch, and within 50 miles of the constructed road are withdrawn, and the even sections within 40 miles, throughout, have been held as double minimum. Homestead entries on double minimum lands were restricted to 80 acres each.

Under the more liberal laws now in force, however, homestead entries of reserved lands in even sections, lying within railroad limits, are not restricted to 80 acres, and when they have been so restricted, under the former laws, the parties thereto may enter 80 acres additional, adjoining that originally entered; or, if preferred, the original entries may be relinquished and new ones made elsewhere of 160 acres each, credit being given for fees and commissions already paid. (Act of March 3, 1879.)

The several changes in the lines of route have undoubtedly affected settlers to some extent, in that their lands have been left nearer to or more remote from the lines, or proposed lines, of the road; and 322 some persons who have made preemption entries have probably paid at the rate of \$2.50 per acre, while their lands have, by subsequent changes, fallen within the "granted" limits. It is not possible to indicate the extent to which these two classes of settlers have been so affected.

The general effect of the changes made in the lines has been to shorten the same, and to reduce the quantity of land affected by the grant. Notably is this the case in Washington Territory, where by the change in the branch line about 5,000,000 acres were restored to settlement and entry.

The withdrawals ordered upon the filing of the several maps of general route were made under authority contained in the sixth section of the granting act of July 2, 1864, for the purpose of protecting the rights of the company until such time as its road should be definitely located. That section declared that the lands granted after the filing of maps of general route should not be liable to sale or entry or preemption. This has been construed by the Department as creating a legislative reservation immediately upon the filing of said general route maps; and by the decision of your predecessor, Hon. C. Delano, of 22d March, 1873, adopting the opinion rendered by Assistant Attorney-General Smith, it was held that all sales and entries made after such maps were filed were illegal; and he directed the cancellation thereof so far as pertained to lands lying opposite any portion of the road definitely located. He, 323 however, directed that all entries of lands falling within that portion of the grant not definitely fixed be suspended until it should be determined, upon definite location of the road, whether the lands inure to the company.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

Undoubtedly the rights of many settlers were affected by this construction of the law, but the subsequent enactment of April 21, 1876—An act to confirm preemption and homestead entries of public lands within the limits of railroad grants in cases where such entries have been made under the regulations of the Land Department"—has operated to relieve all actual settlers who had acquired rights between the time of the filing of the maps in this office and the receipt at the local offices of several letters ordering withdrawals.

I may add, however, that the withdrawals made upon the amended maps, as also those made upon definite locations, have been ordered, with express directions that the same would not take effect until the orders herefor were received at the district offices.

I transmit herewith maps of the several States and Territories named, showing, approximately, the lines of locations above described.

The Senate resolution is herewith returned.

Very respectfully, your obedient servant,

J. M. ARMSTRONG,
Acting Commissioner.

Hon. C. SCHURZ,
Secretary of the Interior.

(Endorsed:) Filed Dec. 13, 1894. J. A. Sladen, clerk.

(Here follow maps marked pp. 324 to 329, incl.)

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INDEX TO APPENDIX.

(Appendix follows page 167 of exhibits.)

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331 F. EXHIBIT A. S. S. M.
(4-207 a)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Jan. 21, 1893.

I, M. M. Rose, Acting Commissioner of the General Land Office, do hereby certify that the annexed copy of the letters of the Secretary of the Interior, dated August 13th, 1870, is a true and literal exemplification from the original on file in this office, and that the annexed tracings of maps showing the general route of the Northern Pacific Railroad Company are true copies of so much of said maps as are shown thereon.

In witness whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

M. M. ROSE,
Acting Commissioner of General Land Office.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Aug. 13th, 1870.

SIR: I transmit herewith two maps, showing the designated route of the Northern Pacific Railroad.

You will immediately direct the proper local land officers in the States of Wisconsin and Minnesota to withhold from sale, pre-emption, homestead, and other disposal the odd-numbered sections not sold, reserved, and to which prior rights had not attached, within twenty miles on each side of the route, and in like manner direct the officers in Washington Territory to withhold such odd-numbered sections as lie south of the town of Steilacoom. The unsurveyed, as well as the surveyed, lands will be included in the reservation, and you will direct the local officers to give notice accordingly, and as the township plats are received by them they will make the proper notes of reservation thereon.

The withdrawal will take effect from the receipt of the order at the local office.

Very respectfully, your obedient servant,

J. D. Cox, *Secretary*.

Hon. Jos. Wilson,

Comm'r of the Gen'l Land Office.

(Endorsed:) The attention of Mr. Reilly, principal clerk of public land, and of Mr. Mendenhall, accountant, etc., will please examine these papers, and promptly take the necessary steps to carry the orders of the Secretary into effect. Jos. S. Wilson, Commissioner. August 13th, 1870. J. 11,893.

(Here follow maps marked pp. 333 to 336, incl.)

337 F.

EXHIBIT F.

S. S. M.

(4-207 a)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Jan. 21st, 1893.

I, M. M. Rose, Acting Commissioner of the General Land Office, do hereby certify that the annexed copies of the letter of E. F. Johnson, dated April 27th, 1867, and Commissioner's reply of May 8, 1867, are true and literal exemplifications from the files and records of this office, and that the annexed copy of so much of a map showing proposed lines of route of the Northern Pacific Railroad, is a true copy of the original on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of the office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

M. M. Rose,
Acting Commissioner of General Land Office.

WASHINGTON, D. C., April 27th, 1867.

Hon. JOS. S. WILSON,
Commissioner Land Office, etc.

338 DEAR SIR: I am directed by the Northern Pacific Railroad Company as their engineer to commence at the earliest practicable moment the survey and location of the line of their road in Wisconsin and Minnesota.

The charter of the company provides that the eastern terminus of their road shall be at a point on Lake Superior, within the limits of one of the two States above named.

Already, as I am informed, two railroad companies, having land grants from the Government, have located their lines connecting with Lake Superior near its western extremity. In order that the line of the Northern Pacific Railroad Company may be so located as to interfere as little as possible with other lines, and secure to the company its quota of land under the grant made to it, it is desirable to know what lands within the limits prescribed in its charter have been disposed of either to railway companies or otherwise, including such as have been withdrawn or reserved to the Indians.

It is not probable that the terminus of the Northern Pacific Railroad, if placed on the northern side of the lake, will be established further east than Buchanan, and if upon the south side, farther east than the head of Chequamegon bay. Should this latter point be selected, the line, on leaving the lake, will probably incline somewhat to the south—not, however, more than about ten miles—and thence it will run by a nearly direct course to near Crow Wing or Fort Ripley, on the Mississippi, and thence to near Breckenridge on the Red River.

Wherever the terminus may be upon the lake, whether at either of the points named or between them, the line will not, I think, cross the Independent meridian, which forms in part the boundary between Wisconsin and Minnesota, farther north than twenty miles north of the fifth correction line in Minnesota, or further south than 339 twenty miles south of the same line.

From this description, and referring to the company's charter, you will be able, I trust, to furnish to the railroad company a sketch of such lands as are available under their grant.

The company, while they desire to make the most of their land grant, will endeavor to so locate their road as that its character for directness between important points and lowness of gradients shall not be in any respect impaired.

Upon the map enclosed I have marked in pencil the limits within which the line of the railroad will probably be placed. With these for a guide, and the company's charter, the space to be embraced in the answer to this request of the company will, I think, be easily ascertained.

Please address me at "Middletown, Connecticut," as I desire to leave soon for Minnesota to commence the survey of the railroad.

Your early attention to the subject will very greatly oblige,

Yours, very respectfully,

EDWARD F. JOHNSON,
Chief Engr. N. Pacific R. R. Co.

(Endorsed :) H 2308. Edwin F. Johnson, Washington, D. C., Apr 27th, 1867, enclosed a map of the Northern Pacific Railroad in the State of Minnesota. Answered May 8th, 1867. Mendenhall—P.—Mendenhall, April 29, 1867.

340

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
May 8th, 1867.

EDWIN F. JOHNSON, Esq.,
Chief Engineer North Pacific Railroad Co.,
Middletown, Connecticut.

SIR: In response to your inquiry of the 27th ulto. relative to the land in Wisconsin and Minnesota which may inure to the Northern Pacific Railroad Co. under the act of 2d July, 1864, I herewith return the diagram accompanying your letter, upon which I have noted the limits of the grant as relates to each route in black and red dotted lines, corresponding to the color of line of route, and would state, first: That the amount of lands which would inure to the grant within the limits of black lines, being the line of road from Buchanan, may be estimated as follows, to wit:

Within limits of grant.....	6,500,000 acs
" " indemnity.....	1,500,000 "
	<hr/> 8,000,000 "
Disposed of within those limits:	
Prior railroad grants.....	1,200,000
Indian reservations.....	3,000
Sold and located.....	1,000,000
	<hr/> 2,500,000
Estimated as inuring to grant.....	<hr/> 5,500,000

Second. The amount of grant which would inure within the limits of red lines, being the line of road from Chequanigon, may be estimated as follows, to wit:

341 Within limit of grant.....	7,500,000
" " for indemnity.....	2,000,000
Total.....	<hr/> 9,500,000
Disposed of within those limits:	
Prior railroad grants.....	4,300,000
Indian reservation.....	300,000
Sold and located.....	1,500,000
	<hr/> 6,100,000
Estimated as inuring to grant.....	<hr/> 3,400,000

I am, sir, very respectfully,

JOS. S. WILSON, Commissioner.

(Here follows map marked p. 342.)



34

F.

EXHIBIT L.

S. S. M.

(4-207)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Jan. 21, 1893.

I, M. M. Rose, Acting Commissioner of the General Land Office, do hereby certify that the annexed copy of Commissioner's letter of January 31, 1870, to the local officers at Oregon City, Oregon, is a true and literal exemplification from the record thereof in this office, and that the annexed tracing is a true copy of so much of the map showing the definite location of the Oregon and California Railroad from Portland to Jefferson, Oregon, now on file in this office, as is shown thereon.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington on the day and year first above written.

[SEAL.]

M. M. ROSE,
Acting Commissioner of General Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
January 31st, 1870.

REGISTER AND RECEIVER, *Oregon City, Oregon.*

344 GENTLEMEN: The Secretary of the Interior has transmitted to this office a map of the definite location of the line of the "Oregon Central" Railroad from Portland, in Oregon, to Jefferson, on the Santiam River, in said State, and directed the withdrawal of the lands granted thereto under the second section of the act of Congress approved 25th July, 1886. (Statutes, vol. 14, p. 239.) In compliance with the Secretary's instructions, I transmit herewith a State diagram, showing by red line the 20 miles limits of the grant "in place" by township and half township, and by blue line the 10 additional miles indemnity limits.

You are hereby directed to withhold from sale or location, preemption, or homestead entry all the odd-numbered sections within the limits of 20 and 30 miles.

You will proceed at once to lay down distinctly in pencil on the township plats the limits; then make the proper notes, showing the odd sections to be reserved in the respective limits.

The vacant, undisposed-of odd-numbered sections within the 20 miles limits of said road, as indicated in the diagram, inure "in place" to the company, except wherein there exists preemptions having prior inceptions.

In virtue of the act of Congress approved March 3d, 1853, the even sections within the 20-mile limits are subject to preemption at \$2.50 per acre, and must be dealt with accordingly, and in like manner under the homestead law, which reduces the quantity for each homestead entry to 80 acres.

345 The even sections within the 20 miles will not be subject to private entry until duly offered at the increased price.

The even sections thus lying between the 20 and 30 miles will be dealt with as not reserved.

This order will take effect from the date of its reception at your office and you will advise this office of the precise time it may be received by you.

In your reply please refer to this as M by its date.

So soon as a sectionized diagram is prepared it will be transmitted, by which you can make the lands withdrawn by sections and parts of sections so far as the surveys have progressed.

Very respectfully,

JOS. S. WILSON, *Commissioner*.

(Here follow maps marked, pp. 346 to 350, incl.)

351 In the United States circuit court of appeals for the ninth circuit

THE OREGON & CALIFORNIA RAILROAD COMPANY,	}	No. 275.
John A. Hurlburt, and Thomas L. Evans, appellants,		
<i>vs.</i>		
THE UNITED STATES OF AMERICA, APPELLEES.		

Appeal from the circuit court of the United States for the district of Oregon.

William F. Herrin and William Singer, jr., for appellants; John M. Gearin for appellees.

Before McKenna and Ross, circuit judges, and Hawley, district judge

Ross, circuit judge, delivered the opinion of the court:

The case is this: By the act of Congress of July 2, 1864 (13 Stat., 365) the Northern Pacific Railroad Company was incorporated, with authority to construct and maintain a continuous railroad and telegraph line—

“Beginning at a point on Lake Superior, in the State of Minnesota or Wisconsin, thence westerly by the most eligible railroad route, as shall be determined by said company, within the territory of the United States on a line north of the 45th degree of latitude, to some point on Puget Sound, with a branch via the valley of the Columbia River to a point at or near Portland, in the State of Oregon, leaving the main trunk line at the most suitable place, not more than three hundred miles from its western terminus.”

And granting to the company, in aid thereof, every alternate section of public land, not mineral, designated by odd numbers to the amount of 20 alternate sections of land per mile on each side of its line, as the company should adopt, through the Territories of the United States, and 10 alternate sections per mile where the road passes through any State.

“And whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office, and whenever prior to said time any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or preempted or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated

by odd numbers, not more than ten miles beyond the limits of said alternate sections."

The sixth section of the act provides that—

"The President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road, after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale or entry or preemption before or after they are surveyed, except by said company, as provided in this act."

On the 6th day of March, 1865, Josiah Perham, as president of the Northern Pacific Railroad Company, addressed to the Secretary of the Interior the following letter:

WASHINGTON, D. C., 6 March, 1865.

Hon. J. P. UPSHER, *Secretary of the Interior.*

353 SIR: Under authority from the board of directors of the Northern Pacific Railroad Company, I have designated on the accompanying map in red ink the general line of their railroad from a point on Lake Superior, in the State of Wisconsin, to a point on Puget Sound, in Washington Territory, via the Columbia River, adopted by said company as the line of said railroad, subject only to such variations as may be found necessary after more specific surveys, and I respectfully ask that the same may be filed in the office of the Commissioner of the General Land Office, together with a copy of the charter and organization of said company, and that under your directions the lands granted to said company may be marked and withdrawn from sale in conformity to law.

I am, respectfully, your ob't serv't,

JOSIAH PERHAM,
Pres't. N. P. R. R. Company.

Accompanying this letter was a map upon which was traced, in red ink, a line indicated by the letters "H, J, K, L, M, A, B, C," and extending from Lake Superior to Puget Sound, and along which was written this explanatory statement: "H, J, K, L, M, A, B, C, is practicable railroad as surveyed by Governor Stevens."

On the 9th of March, 1865, the then Secretary of the Interior, Mr. Upham, addressed to the Commissioner of the General Land Office the following letter:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., March 9th, 1865.

SIR: Herewith I transmit a map upon which the "general line" of the Northern Pacific Railroad, as adopted by the board of directors of that railroad company, is delineated; also a copy of the letter of the president of said company, dated the sixth instant, requesting that the granted lands along said line be withdrawn from market.

354 In view of the provisions of the 3d and 6th sections of the act of Congress approved July 2, 1864 (Pamphlet Laws, pages 368, 369), should you perceive no objection, I think that the odd-numbered sections along the line for ten miles in width on each side, in Minnesota and Wisconsin, and for twenty miles in width on each side along that part of the line extending through the Territories westward

to Puget Sound, may be withdrawn as requested, as preliminary to the final survey and location of said railroad.

The even-numbered sections along the line will, however, be subject to disposal by the United States, as provided in the 6th section of said act of Congress.

Very respectfully, your ob't servant,

J. P. UPSHER, *Secretary*.

THE COMMISSIONER OF THE GENERAL LAND OFFICE.

Mr. Harlan having, shortly after, succeeded Mr. Upsher as Secretary of the Interior, the Commissioner of the General Land Office, on June 22nd, 1865, addressed to him a letter, stating, in substance, that Secretary Upsher had, under date of March 9, 1865, sent to the General Land Office a diagram showing the proposed route of the Northern Pacific Railroad Company, which diagram had been filed in the Secretary's office, accompanied by a request for the withdrawal of the land along such route; that, as no withdrawal had been ordered by Secretary Upsher, no action was taken in the General Land Office upon the application, and that as Mr. Perham, president of the company, had called attention to the matter, the Commissioner, while proceeding to state objections to the diagram and his reasons for thinking no withdrawal for the benefit of the company should be made, asked for such directions as the Secretary-
355 should deem proper in the premises. Among the objections urged by the Commissioner was this: That the diagram presented to and filed with the Secretary did not constitute such a map of the general route of the proposed road as was required by law and the rules of the Land Department; that these required "a connected map showing the exact location; the map indicating by flagstuffs the progress of the survey; the map to be authenticated by the affidavit of the engineer, with the approval of the accredited chief officer of the grantee," and that, in the judgment of the Commissioner, no withdrawal should be ordered until such a map is filed in the General Land Office. These views of the Commissioner, so far as the record shows, were acquiesced in by the Secretary of the Interior, as well as by the Northern Pacific Railroad Company, for nothing further, so far as appears, was ever done with or under the Perham map or diagram.

On the 14th of July, 1866, Congress made a grant to the Oregon & California Railroad Company in aid of the construction of a line of railroad and telegraph, beginning at the city of Portland, Oregon, and extending thence southerly through the Willamette, Umpqua, and Rogue River valleys to the southern boundary of that State, there to connect with a line of railroad and telegraph to be built from a point on the Central Pacific Railroad, in the Sacramento Valley, in California, to the point of connection at the Oregon line (14 Stat., 239). The grant was of every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections of land per mile (ten on each side) of the designated line, with the provision usually found in such grants for the selection of indemnity lands within defined limits for such sections or parts of sections within the primary limits
as shall be found to have been granted, sold, reserved, occupied
356 by homestead settlers, pre-empted, or otherwise disposed of.

On October 29, 1869, the Oregon & California Railroad Company duly filed in the office of the Commissioner of the General Land Office its map of definite location, showing that portion of the surveyed line it was, by the act of July 14, 1866, authorized to build from Portland southerly to the California boundary, and extending beyond and opposite the lands here in controversy. The map so filed was accepted, and, by the direction of the Secretary of the Interior, the Commissioner of the General Land Office, on the 31st day of January, 1870, ordered the withdrawal, for the benefit of the Oregon & California Railroad Company, from sale or location, pre-emption or homestead entry, all the odd-numbered sections within twenty and thirty miles of the designated line of road. The Oregon & California Railroad Company proceeded to construct the road along the line so designated, and, having completed it, it was inspected by commissioners appointed for the purpose by the President, and, having been found by him to have been constructed in accordance with the terms of the grant, patents were afterwards, and prior to the commencement of this suit, issued to the Oregon & California Railroad Company for the lands in controversy.

Nothing was done by the Northern Pacific Railroad Company under its grant, except the filing of the Perham map or diagram, together with the accompanying letter of the president of that company and his request for the withdrawal of the lands along its line for its benefit, prior to the definite location of the route of the Oregon & California Railroad Company on October 29, 1869.

In the year following, to wit, May 31, 1870, Congress passed a joint resolution by which, among other things, the Northern Pacific Railroad Company was authorized—

357 "To locate and construct, under the provisions and with the privileges, grants, and duties provided for in its act of incorporation, its main road to some point on Puget Sound via the valley of the Columbia River, with the right to locate and construct its branch from some convenient point on its main trunk line across the Cascade Mountains to Puget Sound; and in the event of there not being in any State or Territory in which said main line or branch may be located, at the time of the final location thereof, the amount of lands per mile granted by Congress to said company, within the limits prescribed by its charter, then said company shall be entitled, under the directions of the Secretary of the Interior, to receive so many sections of land belonging to the United States, and designated by odd numbers, in such State or Territory, within ten miles on each side of said road, beyond the limits prescribed in said charter, as will make up such deficiency on said main line or branch, except mineral and other lands as excepted in the charter of said company of eighteen hundred and sixty-four, to the amount of the lands that have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of subsequent to the passage of the act of July two, eighteen hundred and sixty-four. And that twenty-five miles of said main line between its western terminus and the city of Portland, in the State of Oregon, shall be completed by the first day of January, anno Domini eighteen hundred and seventy-two, and forty miles of the remaining portion thereof each year thereafter until the whole shall be completed between said points." (16 Stat., 378.)

By this resolution, as said by Mr. Secretary Lamar, in *Railroad Co. v. McRae* (6 Land Dec. Dep. Int., 400)—

“The designations of the lines of the road were changed. That which, by the granting act, was known as the ‘branch line’ (via the valley of the Columbia River to a point at or near Portland, in the State of Oregon) was changed to ‘main road’ or ‘main line,’ and that which had been designated as ‘main line’ (across the Cascade Mountains to Puget Sound) was changed to ‘branch line.’ So, by the joint resolution of 1870 (May 31), the company was authorized to locate and construct its main line via the Columbia River, through some point at or near Portland, Or., to a suitable point on Puget Sound, with the privileges, grants, and duties provided for in its act of incorporation.”

After the passage of the joint resolution of May 31, 1870—to wit, on August 4, 1870—two maps, designating the general route of its road, were filed by the Northern Pacific Railroad Company in the General Land Office, upon which orders of withdrawal of the lands along the line indicated thereby were made, respectively, August 13, 1870, and October 27, 1870, within the limits of which withdrawals are the lands afterwards patented to the Oregon & California Railroad Company, and here involved. The Northern Pacific Railroad Company never filed any map of definite location of the line it was authorized to build opposite the lands in controversy, and never built such line, and for its failure in this respect Congress, by the act of September 29, 1890 (26 Stat., 496), forfeited whatever rights, if any, the company had to the lands here in question; and by the present suit the Government seeks to cancel the patents therefor which were issued to the Oregon & California Railroad Company.

That the Oregon & California Railroad Company got nothing by the forfeiture of September 29, 1890, is clear; for the forfeiture declared was for the benefit of the Government only. (*United States vs. Southern Pacific R. R. Company*, 146 U. S., 570.) And if the grant to the Northern Pacific Railroad Company ever attached to the lands in controversy, or if they were withdrawn from the mass of public lands for the benefit of that company at the time the grant to the Oregon & California Railroad Company became effective, it is clear that they were not embraced by that grant, and that the patents therefor should be annulled. The real question in the case, therefore, is, did the lands in question ever become affected by any grant to the Northern Pacific Railroad Company? If they were public lands, not mineral, and not granted, sold, reserved, occupied by homestead settlers, preempted, or otherwise disposed of at the time of the grant to the Oregon & California Railroad Company and at the time of the filing of the map of definite location of the route of that company's road along and opposite to them, it is obvious that they would be embraced by the grant to that company, and can not be affected by any grant contained in the subsequent joint resolution of Congress of May 31, 1870. That resolution, as held by the Supreme Court in the case entitled *United States vs. Northern Pacific Railroad Company* (152 U. S., 284, 294-5-6-7), contained a new grant to the Northern Pacific Railroad Company, but did not embrace any public land disposed of after the passage of the act of July 2, 1864. The joint resolution of May 31, 1870, and the proceedings taken thereunder by the

Northern Pacific Railroad Company have, therefore, no bearing whatever on the question in this case, and the effect given by the court below to the maps filed by the Northern Pacific Railroad Company under and pursuant to the provisions of that resolution constitutes one of the errors into which the court below fell in its consideration and decision of this case.

The only thing remaining in the case that could take the lands in controversy out of the mass of public lands to which the grant of 1866 to the Oregon & California Railroad Company applied is the preceding grant to the Northern Pacific Railroad Company of July 2, 1864, and
360 the Perham map or diagram filed thereunder.

It is not pretended that any order of withdrawal was made by any officer of the Land Department based on that map. Was it sufficient, taken in connection with the act of July 2, 1864, to constitute a statutory withdrawal of the lands in question for the benefit of the Northern Pacific Railroad Company?

It was not, for at least two very substantial and obvious reasons. Upon its face, as well as by the letter accompanying it from the president of the Northern Pacific Railroad Company, of date March 6, 1865, it purported to be a designation of the general route of a railroad from a point on Lake Superior, in the State of Wisconsin, via the valley of the Columbia River, to Puget Sound, in the State of Washington, which the letter of its president stated the company had adopted as the line of its road.

That was not the line the Northern Pacific Railroad Company was authorized by the act of July 2, 1864, to locate and build. The line authorized by that act, and in aid of which that grant was made, extended, as has been seen, from a point on Lake Superior, in the State of Minnesota or Wisconsin, westerly, by the most eligible railroad route, on a line north of the 45th degree of latitude and within the territory of the United States, to some point on Puget Sound, with a branch via the valley of the Columbia River to a point at or near Portland, in the State of Oregon, leaving the main trunk line at the most suitable place not more than three hundred miles from its western terminus. (13 U. S. Stat., 365; United States vs. Northern Pacific Railroad Company, 152 U. S., 284.)

As said by the Supreme Court, in the case just cited, "Although
361 that act allowed the company to adopt the most eligible route within the territory of the United States north of the forty-fifth degree of latitude, it is clear that Congress contemplated the construction of a main trunk line between Lake Superior and Puget Sound which would not touch any point 'at or near Portland,' and the western end of which would be east and northeast of a direct line between Portland and Puget Sound, and, in addition, a branch line leaving the main trunk line at some suitable place not more than three hundred miles from its western terminus and extending 'via the valley of the Columbia River to a point at or near Portland.' If the main line, as originally indicated by the act of 1864, had been established on the route between Portland and Puget Sound, the branch line could not have left the main line at some point not more than three hundred miles from its western terminus and extended via the valley of the Columbia River to a point at or near Portland. The authority given to the company to adopt the most eligible

route did not authorize it, by a map of general route, to cover an unlimited extent of country north of the forty-fifth degree of latitude. On the contrary, as said in *St. Paul & Pacific Railroad Co. v. Northern Pacific Railroad* (139 U. S., 1, 13), 'when the termini of a railroad are mentioned, for whose construction a grant is made, the extent of which is dependent upon the distance between those points, the road should be constructed upon the most direct and practicable line. No unnecessary deviation from such line would be deemed within the contemplation of the grantor, and would be rejected as not in accordance with the grant.'

The indefiniteness of the Perham map or diagram, which is so manifest on its face, was alluded to by the Supreme Court in the same case (152 U. S., 292), in these words: "It may be that the indefiniteness of the map of general route presented by the Northern Pacific Railroad Company in 1865 constituted the reason why that map was not accepted by the Interior Department."

So it was, as has already been shown. The fact that upon its face it did not purport to be anything more than a mere sketch or diagram, unauthenticated by any engineer or officer charged with the duty of designating such a route, coupled with the fact that it was not only not accepted, but was rejected, by the Land Department of the Government as insufficient to properly designate the general route of the road the company was, by the act of Congress, authorized to build, constitutes a second reason why the granting act did not itself operate to withdraw the lands in controversy for the benefit of the Northern Pacific Railroad Company. They therefore remained public lands to which the subsequent grant to the Oregon & California Railroad Company might apply, unless it be that the grant contained in the act of July 2, 1864, in and of itself, without any designation of the route of its road by the grantee, Northern Pacific Railroad Company, operated to withdraw the lands in controversy from the mass of public lands. And if these lands, why not all other public lands within the territory of the United States situated north of the 45th degree of latitude and between the termini named in the act? It would be difficult to maintain any distinction in this respect between any of the public lands, not mineral, situated in the immense belt through and along which the Northern Pacific Railroad Company might have located and constructed its road.

The court below, in its opinion, held that "It might definitely locate its line in good faith, in compliance with the requirement of the act, and by such location select and acquire the lands within the place limits upon both sides of its line. It is unimportant that the company never exercised this power."

In holding that it is unimportant that the Northern Pacific Railroad Company never exercised its right to locate and build its road along and opposite to the lands in controversy, the court below committed its second error.

It is said that the grant contained in the act, in and of itself, was "an appropriation of the public lands." Of what public lands? Of all the public lands situated within that immense belt through and along which the Northern Pacific Railroad Company was authorized to locate and build its road? Manifestly, if, prior to any designation by the grantee company of the line of road it was authorized to locate and build, the

act making the grant in and of itself operated as an appropriation of any particular land, it operated as an appropriation of all public lands within the United States, situated north of the forty-fifth degree of latitude and between the termini named in the act; for, prior to some designation of the route, it could not be known where the grantee company would find the most eligible railroad route, along which route it was authorized to build. We repeat, therefore, that prior to the designation of some route no distinction can be made between any of the public lands, not mineral, situated in the belt through and along which the Northern Pacific Railroad Company might have located and constructed its road. Is it possible that all of that immense body of public land was, by the act of July 2, 1864, in and of itself, without any designation by the grantee company of the line of its road, withdrawn from subsequent grants? Undoubtedly not. In the case of *United States vs. Southern Pacific Company* (146 U. S., 570) the Supreme Court said that the intent of Congress in all railroad land grants, as has been declared by that court again and again, was that such grants shall operate at a fixed time, and shall take only such lands as at that time are public lands.

364 And in respect to this very grant of July 2, 1864, the Supreme Court, in the case of *United States vs. Northern Pacific Railroad* (152 U. S., 296), in express terms declared that it embraced only public land to which the United States had full title, not reserved, sold, granted, or otherwise appropriated, and free from preemption, or other claims or rights, at the time its line of road was definitely fixed and a plat thereof filed in the office of the Commissioner of the General Land Office. As it is not pretended that any such line, in so far as concerns the lands here in controversy, ever was definitely fixed, how that grant, in and of itself, without any designation of the required route, can be held to embrace these lands we are unable to understand. It requires an act of the grantee to give precision to such grants and to identify by the location of its road the lands embraced by the grant. When that is properly done the grant attaches thereto and becomes effective as of its date; but until there is some designation of route by the grantee there is nothing to segregate any particular land from the mass of public lands, and, manifestly, if such segregation never occurs those that otherwise might be covered by the grant remain public lands and subject to any other valid grant that Congress may have made embracing them. The grant of July 2, 1864, to the Northern Pacific Railroad Company never having taken effect, so far as concerns the lands in controversy in this suit, they were public lands at the time of the grant to the Oregon & California Railroad Company, and at the time of the definite location by that company of the road it was authorized to build along and opposite to them, and falling, as they do, within the terms of that grant, and having been earned by and patented to that company, the judgment is reversed and cause remanded, with directions to the court below to dismiss the bill.

(Indorsed:) Opinion. Filed October 19, 1896. F. D. Monekton, clerk.

365 (Indorsed:) No. . U. S. circuit court of appeals, for the
ninth circuit. vs.

366 United States circuit court of appeals, for the ninth circuit.

THE OREGON & CALIFORNIA RAILROAD COMPANY, John A. Hurlburt, and Thomas L. Evans, appellants,	} No. 275.
vs. THE UNITED STATES OF AMERICA.	

McKENNA, circuit judge, dissenting:

It is contended by appellants that the grant to the Oregon & California Railroad Company is within the reservations of the grant to the Northern Pacific Railroad Company. That is, by filing its map of definite location before the Northern Pacific Company had fixed its line of road, either by a map of general route or definite location, it acquired priority of right by the exceptions in the grant to the Northern Pacific Company. This is important to be considered. If true, it determines the case in favor of appellants, without regard to the propositions considered by the majority of the court. If not true, it is yet important as bearing on those propositions.

Section 3 of the Northern Pacific Railroad act is as follows:

"And be it further enacted, that there be, and hereby is, granted to the Northern Pacific Railroad Company * * * for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast * * * every alternate section of public land, not mineral, designated by odd numbers, to the amount of 20 alternate sections per mile on each side of said railroad line, as said company may adopt through the Territories of the United States, and 10 alternate sections per mile on each side of said railroad whenever it passes through any State; and whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from preemption, or other claims or rights, at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office, and whenever prior to said time any of said sections, or parts of sections, shall have been granted, sold, reserved, occupied by homestead settlers, or preempted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof." * * *

The reservation is in italics, and its letter supports the contention of appellants, and it is claimed that it is also supported by *United States vs. Northern Pacific Railroad Company* (152 U. S., 284). In opposition to the contention, appellees rely on *Missouri, &c., Railroad Company vs. Kansas Pacific Railway Company* (97 U. S., 491), and *St. Paul & Pacific Railroad Company vs. Northern Pacific Railroad Company* (139 U. S., 1). (1) *Missouri, &c., Railroad Company vs. Kansas Pacific Railway Company* (97 U. S., 491) was a suit which involved the title to lands claimed by two railroad companies under grants from the United States. The decision is by Justice Field, and is expressed with the usual clear and firm precision which characterizes his opinions. The grants passed on had reservations similar to those in the present case, and, after considering their nature and the objects of the reservations, he said:

"It was not within its language or purpose to except from its operation any portion of the designated lands for the purpose of aiding in the construction of other roads."

St. Paul & Pacific Railroad Company vs. Northern Pacific Railroad Company (139 U. S., 1) was also a contest between two grants, and one of them the grant to the Northern Pacific Railroad Company. Justice Field said:

"It is also urged against the priority of the plaintiff's claim that by the terms of the act making the grant to the Northern Pacific Railroad Company all subsequent grants prior to the definite location of its road are excepted."

And then, showing that the contention had no application to the case, further said:

"But independently of this conclusion, we are of opinion that the exception in the case making the grant to the Northern Pacific Railroad Company was not intended to cover other grants for the construction of roads of a similar character, for this would be to embody a provision which would often be repugnant to and defeat the grant itself." (*Missouri, Kansas & Texas Railway v. Kansas Pacific Railway*, 97 U. S., 491, 498, 499.)

Appellants, however, urge that these expressions are but dicta. If so, they nevertheless were confidently laid down, and in such way as to seem to be the conviction of the whole court. In *St. Paul & Pacific Railway Company v. Northern Pacific Railroad Company* they were one of two answers to an explicit contention which was made; and in *Missouri, &c., Railway Company v. Kansas Pacific Railroad Company* it was the purpose of the court to give such fullness of consideration and decision not only as to what was granted but the limitations on what was granted, and make the case determinative of controversies arising on both.

In *United States vs. Northern Pacific Railroad Company* the controversy was of the ownership of certain lands which the United States claimed by reason of a forfeiture of a grant to the Oregon Central Railroad Company. The Northern Pacific Company claimed them under the grant contained in the resolution of 1870, which is set out in the opinion of the majority of this court.

On the question of the lands being within the resolution of 1870, Justice Harlan, speaking for the court, said:

"But does the grant contained in the resolution of 1870 embrace the particular land in dispute? The act of 1864 granted to the Northern Pacific Railroad Company only public land to which the United States had full title, not reserved, sold, granted, or otherwise appropriated, and free from preemption, or other claims or rights, at the time its line of road was definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office. And by the resolution of 1870 it was declared that if at the time of the final location of the company's main line or branch there were not enough lands per mile within the prescribed limits, the deficiency could be supplied from lands within ten miles beyond those limits, other than mineral and other lands, as excepted in the charter of the company, 'to the amount of the lands that have been granted, sold, reserved, occupied by homestead settlers, preempted, or otherwise disposed of subsequent to the passage of the act of July 2, 1864.' It is therefore clear that no public land disposed of after the passage of the act of July 2, 1864, was intended to be embraced in the grant of May 31, 1870.

"The lands here in question were disposed of by the United States after the passage of the act of 1864, and before the passage of the joint resolution of May 31, 1870, for they are within twenty miles of the land of the Oregon Central Railroad Company, as shown on its map of definite location, filed January 31, 1872, and based upon the grant to it of May 4, 1870. It is true that the Northern Pacific Railroad Company on the 13th day of August, 1870, acting under the joint resolution of May 31, 1870, filed a map of the general route of its main line from a point on

370 Puget Sound; that, on the same day, twenty sections per mile on each side of the line indicated on it were withdrawn from sale for the benefit of the company; and that this was followed by a map, filed September 13, 1873, of the definite location of its line from Kalama to Tenino. But it is well settled that, in respect to the public lands, within at least common granted or primary limits, priority of grant, not priority of location, determines the question of ownership, as between parties claiming the same lands under different grants." (*Missouri, Kansas & Texas Railway v. Kansas Pacific Railway*, 97 U. S., 491; *United States v. Missouri, &c., Railway*, 141 U. S., 358, 369; *United States v. Southern Pacific Railroad*, 146 U. S., 570, 598, 606.)

It is clear, therefore, that this case does not militate against the *St. Paul & Pacific Railway Company vs. Northern Pacific Railroad Company*, or *Missouri, &c., Railway Company vs. Kansas Pacific Railroad Company*. The point was not presented in the same way, nor did it depend upon the same reason or reasoning.

In the latter cases the reservations were of future dispositions under the ordinary land laws.

In *United States vs. Northern Pacific Railroad Company* (treating the resolution of 1870 as a grant as of that time) the reservations were of prior dispositions. The difference is substantial, and demanded the different interpretation given. From a grant to a railroad company of undefined limits it might be well to except lands to be disposed of under the ordinary land laws and not grants to other railway companies; the former might be consistent with the grant—at any rate, could not impair it to an appreciable extent, or beyond what could be compensated by the *lieu-land* provision—while it would not interrupt the settlement of the country; the latter would be repugnant to the grant and might defeat it utterly.

371 It follows, therefore, that the grant to the appellant road was not within the reservations of the grant to the Northern Pacific Company, and we are brought to the proposition discussed by my learned associates, and upon which I differ from them, to wit: Did the grant to the Northern Pacific Company by the act of 1864 amount to such an appropriation of the lands in controversy as to preclude them from the operation of the grant to the Oregon & California road by the act of 1866?

I state the question without regard to the Perham or other maps filed under the resolution of 1870, for I agree with the majority of the court that neither the Perham map nor that resolution, nor the maps filed under it, have any bearing on the question to be determined, and that if the circuit court gave effect below to such maps it was error. But I am not sure that the circuit court did give effect to them. There is some uncertainty in the statement of the learned judge who presided in that court,

but I am not sure that there was any in his view of the ultimate and decisive question of the case.

Many phases of railroad land-grant cases have been presented to the Supreme Court and have been so firmly established as to become postulates. These are, that grants of that kind are grants in presenti in the nature of a float; that they do not attach to specific sections until identification by a map of definite location of the road; that within what has been called "common granted or primary limits" the date of the grant is the determinative fact in contending railroad grants, not the date of location, giving, if prior, priority of right; if, at the same time, equality of right—that is, giving the land in equal undivided moieties—in neither case can an advantage be secured by priority of location or of construction; that the condition of building the road is a condition subsequent, the right and grant continuing until forfeiture by or entry by the United States, and that the forfeiture or entry, in the absence
372 of explicit legislative declaration, is for the benefit of the United States, not for the benefit of subsequent grantees.

Applying these principles, and the principle that we have seen is likewise established, to wit, that subsequent grants to railroads are not within the reservations of prior ones, how should the question in this case be answered? The last principle expressed removes as irrelevant to contests between railway grants maps of general route or of definite location. They only have purpose to the objects of the reservations, to wit, settlers (homestead or preemption), not railroads. As to these—that is, as to railroads—we can only have regard to the date of the grant and the rights conveyed. I can not see (and I say it with deference) that the consequence, though it inevitably follows that if the lands in controversy be deemed appropriated by the Northern Pacific Railroad act all lands situated north of the 45th degree of latitude must have been withdrawn, is very embarrassing. To what is it embarrassing? To settlers? To the occupation and development of the country under the land laws? Not at all. This is prevented by the reservations in the grant. To other railroad companies? Grants to these was not a constant but an occasional policy, and dependent so much upon special circumstances as to require (certainly not necessarily to exclude) a right of selection of route in a wide territory. If this was to be primarily guarded against or to be afterwards corrected, the remedy was in Congress, and obvious.

But it does not inevitably follow that all the land north of the 45th degree of latitude was withdrawn. The grant had a limitation, and a practical one, too. The right was not to run the road anywhere north of the 45th degree of latitude, but from a point on Lake Superior to a point
on Puget Sound by the most direct eligible route. The Supreme
373 Court said in *United States vs. Northern Pacific Railroad Company*, *supra*:

"Although that act allowed the company to adopt the most eligible route within the territory of the United States north of the 45th degree of latitude, it is clear that Congress contemplated the construction of a main trunk line between Lake Superior and Puget Sound which would not touch any point 'at or near Portland,' and the western end of which would be east and northeast of a direct line between Portland and Puget Sound, and, in addition, a branch line leaving the main trunk line at

some suitable place not more than three hundred miles from its western terminus and extending 'via the valley of the Columbia River to a point at or near Portland.' If the main line, as originally indicated by the act of 1864, had been established on the route between Portland and Puget Sound, the branch line could not have left the main line at some point not more than three hundred miles from its western terminus and extended via the valley of the Columbia River to a point at or near Portland. The authority given to the company to adopt the most eligible route did not authorize it by a map of general route to cover an unlimited extent of country north of the 45th degree of latitude. On the contrary, as said in *St. Paul & Pacific Railroad v. Northern Pacific Railroad* (139 U. S., 1, 13), 'When the termini of a railroad are mentioned for whose construction a grant is made, the extent of which is dependent upon the distance between those points, the road should be constructed upon the most direct and practicable line. No unnecessary deviation from such line would be deemed within the contemplation of the grantor, and would be rejected as not in accordance with the grant.'

I have said, as to contesting railroad grants, we do not regard maps, either of general route or of definite location, but only the date of
 374 the grants and the rights conveyed by them. What rights are conveyed by them? There are two, one ultimate and the other provisional. The ultimate one gives a title to a certain number (twenty in the Territories, ten in the States) of specified sections. The provisional gives a power of selection of these from a wider extent of territory. Is it not a substantial and necessary right? May it exist in fullness and with power to exercise in two railroad companies at the same time? Manifestly not. May it exist in them in succession, or, rather, suspended in one until default in the other? If so, when comes default, and how? In the answer to the first of these questions it must, of course, be conceded that Congress has the power to grant a right in the public lands expectant or conditional upon the nonaccruing of another, and probably the reasons for its existence, or the embarrassments of a contrary view, have not been or can not be put more strongly than the ability of counsel have put them in this case. But the same reasoning was urged in one of the first railroad land-grant cases (*Leavenworth, &c., R. R. Co. vs. U. S.*, 92 U. S., 733); it was urged in the last (*U. S. vs. Southern Pacific R. R. Co.*, 146 U. S., 570). It formed the basis of the able dissenting opinion in both cases, but the majority of the court has firmly resisted it—given always the same answer to it—that Congress in any of its grants can not be supposed to have thereby intended to include land previously assigned for another purpose; that it did not intend to cause or invite vexatious conflicts, and that it only concerned the United States what became of land, claims to which were abandoned or forfeited.

In *United States vs. Southern Pacific Railroad*, *supra*, the lands in controversy lay within the granted limits of the Atlantic & Pacific and Southern Pacific companies at the crossing of their lines, as definitely located.
 375 Congress passed an act forfeiting the grant to the Atlantic & Pacific Company, and it was claimed by the Southern Pacific Company under its grant. The Southern Pacific Company filed its map April 3, 1871, more than a year before the Atlantic & Pacific Company filed its map, and it was hence contended that if the title of the

Southern Pacific Company was displaced it was only conditionally displaced—that is, displaced on condition that the Atlantic & Pacific Company should, by the final completion of its road, perfect its right thereto. The court, however, resisted the contention, and held that whatever title or right the Southern Pacific Company might acquire by a prior filing of its map was absolutely displaced when the Atlantic & Pacific Company's map was filed.

"Illy as it may accord," said Justice Brewer, "with the common-law notions of identification of tracts as essential to a valid transfer of title, it is fully settled that we are to construe these acts of Congress as laws as well as grants; that Congress intends no scramble between companies for the grasping of titles by priority of location, but that it is to be regarded as though title passes as of the date of the act, and to the company having priority of grant, and, therefore, that in the eye of the law it is now as though there never was a period of time during which any title to these lands was in the Southern Pacific."

Some misunderstanding may arise from the use of the word "attached" in this citation. It is manifest, however, the expression was only used to meet the language of the contention. It is manifest that there was no displacement of title. There never was any in the Southern Pacific Company to be displaced.

There was an act of Congress forfeiting the title of the Atlantic & Pacific Company and the court held that this did not inure to the benefit of the Southern Pacific Company. The case was a controversy over the title to specific tracts. Does its principle apply to a controversy over the right of selection of specific tracts? It is said that there is a passage in the opinion which forbids such application. It is as follows:

"Indeed, the intent of Congress in all railroad land grant, as has been understood and declared by this court again and again, is that such grant shall operate at a fixed time, and shall take only such lands as at that time are public lands, and, therefore, grantable by Congress, and is never to be taken as a floating authority to appropriate all tracts within the specified limits which at any subsequent time may become public lands. The question is asked, Supposing the Atlantic and Pacific Company had never located its line west of the Colorado River, would not these lands have passed to the Southern Pacific Company under its grant? Very likely that may be so. The language of the Southern Pacific Company's grant is broad enough to include all the land along its line, and if the grant to the Atlantic & Pacific Company had never taken effect it may be that there is nothing that would interfere with the passage of the title to the Southern Pacific Company."

On a disputable proposition, it is natural to look to any intimation of the Supreme Court, not only because of the supremacy of that tribunal, but because of the learning and roundabout care which are bestowed upon its opinions. Yielding to this to the utmost, I can not find anything authoritative in the passage. Such questions are often put and as often answered as the court answered that one—or rather did not answer it, but only noticed—conceding a possibility which it was not necessary to decisively affirm or deny. But the court proceeded to say that the

result supposed by the question was neither intended nor expected by Congress, and if there had been no act of forfeiture the Atlan-

tic & Pacific could yet have constructed its road and secured the lands. "No power," said the court, "but that of Congress could interfere with this right of the Atlantic & Pacific. No one but the grantor can raise the question of a breach of a condition subsequent."

This language and reasoning are applicable to every right under the granting acts, whether we consider the intention of Congress or its power to forfeit, and the effect of its exercise of the power, and it seems to me irresistably so.

By the express declaration of the act the grants were made and the rights and privileges were conferred upon and accepted by the Northern Pacific Railroad Company on the condition that it should commence work on the road within two years from the approval of the act by the President, and complete and equip the whole road by the 4th of July, 1876; and the further condition that, if the company should make any breach of the conditions of the grants, and allow the same to continue for upwards of one year, then at any time thereafter the United States might do any and all acts and things needful and necessary to insure a speedy completion of the road. (Secs. 8 and 9.) Subsequently a joint resolution was passed by Congress extending the time for the commencement of the road to July 2, 1868, and for its completion to July 4, 1878. (14 Stat., 355, sec. 2.) On the 31st day of May, 1870, Congress passed the joint resolution, already referred to, giving the company power to make "branch line" "main line," and the latter "branch line," but neither taking away nor giving other rights.

The grant to the Oregon & California Railroad Company was made on the 14th of July, 1866. But the default in commencing the road within two years, or the default in building it, either under the original
378 act or the resolution of 1870, was no concern of the Oregon & California Railroad Company. Nor did the forfeiture of September 29, 1890, inure to its benefit. In other words, it got no rights by either the default of the Northern Pacific or the forfeiture by the United States. By what, then, did it get rights, and when? Only by its grant, if at all. But at the date of that the right of locating its road so as to take the lands in controversy existed unimpaired in the Northern Pacific Company, under the prior grant of 1864, and continued to exist and did exist unimpaired in that company January 29, 1870, when the Oregon & California Company filed its map of definite location; did exist when that company built its road; did exist in 1871 and 1877 when patents were issued to that company. If not, by what was it taken away? Certainly not by any act of the United States, and the United States alone had the power. No act of the Oregon & California Company could do it. The default of the Northern Pacific Company, if it was in any, was no concern of the Oregon & California Company. This company had no rights except, as I have already said, those its grant gave it. It could get none from filing a map of definite location, or none by building its road, or impair none that the Northern Pacific Company received by its grant. This seems very plain, but may not the reasoning be still further extended? Whatever rights passed to the Northern Pacific Company by the act of 1864 could only be lost by abandonment, or by resumption by the United States on account of nonperformance of conditions. Abandonment is not claimed, and if it were, abandonment of rights, as forfeiture of rights, has always been held not to contribute to railroad grants.

Were the rights of the Northern Pacific Company taken away
 379 by forfeiture? The majority of the court say no. My brother
 Ross' language is: "That the Oregon & California Railroad Com-
 pany got nothing by the forfeiture of September 29, 1890, is clear; for
 the forfeiture was for the benefit of the Government only. (U. S. v.
 Southern Pacific R. R. Co., 146 U. S., 570.)" But if not by that act,
 not at all; and the rights, and all of them, of the Northern Pacific Com-
 pany still exist, and may yet be exercised. Is not this an irresistible
 conclusion from the cases? Do not all rights of the Northern Pacific
 Company in complete fullness exist until they shall be exercised or for-
 feited? Does not the right to build its road exist and all rights neces-
 sary for that greater right also exist? Are they not inseparable? Is
 not one the complement of the other? And, if so, does not the language
 of Justice Brewer, in *United States vs. Southern Pacific Railroad Com-
 pany*, *supra*, accurately apply? I think so. He said:

"Again, there can be no question, under the authorities heretofore
 cited, that if the act of forfeiture had not been passed by Congress the
 Atlantic & Pacific could yet construct its road, and that constructing it,
 its title to these lands would become perfect. No power but that of Con-
 gress could interfere with this right of the Atlantic & Pacific. No one
 but the grantor can raise the question of a breach of a condition subse-
 quent. Congress, by the act of forfeiture of July 6, 1886, determined
 what should become of the lands forfeited. It enacted that they be
 restored to the public domain. The forfeiture was not for the benefit of
 the Southern Pacific; it was not to enlarge its grant as it stood prior to
 the act of forfeiture. It had given to the Southern Pacific all that it
 had agreed to in its original grant, and now, finding that the Atlantic &
 Pacific was guilty of a breach of a condition subsequent, it elected
 380 to enforce a forfeiture for that breach, and a forfeiture for its own
 benefit."

It follows from these views that the decision of the circuit court was
 correct.

There are other points urged by appellants, either for modification or
 reversal of the judgment, which, not being decisive of the merits of the
 case, I have not considered, in view of the effect of the opinion of the
 majority of the court.

(Endorsed:) Dissenting opinion. Filed October 19, 1896. F. D.
 Monekton, clerk.

381 (Indorsed:) No. . U. S. circuit court of appeals for the
 ninth circuit. vs. .

382 United States circuit court of appeals for the ninth circuit.

THE OREGON & CALIFORNIA RAILROAD COMPANY, John A. Hurlburt, and Thomas L. Evans, appellants, vs.	} No. 275.
THE UNITED STATES OF AMERICA.	

Appeal from the circuit court of the United States for the district of Oregon.

This cause came on to be heard on the transcript of the record from
 the circuit court of the United States for the district of Oregon,
 and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, reversed, and cause remanded, with directions to the court below to dismiss the bill.

(Endorsed :) Decree. Filed Oct. 19, 1896. F. D. Monckton, clerk.

383 (Indorsed :) No. . United States circuit court of appeals
for the ninth circuit. October Term, 189 . Decree. Filed
, 189 . , clerk.

384 United States circuit court of appeals for the ninth circuit.

THE UNITED STATES OF AMERICA, COMPLAINANTS and appellants,	} No. 275.
<i>vs.</i>	
THE OREGON & CALIFORNIA RAILROAD COMPANY, John A. Hurlburt, and Thomas L. Evans, respondents and appellees.	

The above-named complainant, the United States of America, conceiving itself aggrieved by the order and decree entered on the 19th day of October, 1896, in the above-entitled suit in the above-entitled court, doth hereby appeal from said order and decree to the Supreme Court of the United States, and prays that this, its appeal, may be allowed, and that an abstract of the record and proceedings and papers upon which said order and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

DANIEL R. MURPHY,
United States Attorney for the District of Oregon.
JNO. M. GEARIN,
Special U. S. Attorney.

And now, to wit, on the 11th day of December, 1896, it is ordered that the appeal be allowed as prayed for.

JOSEPH McKENNA,
Circuit Judge.

(Endorsed :) Order of judge allowing appeal. Filed Dec. 11, 1896. F. D. Monckton, clerk.

385 In the Supreme Court of the United States.

THE OREGON & CALIFORNIA RAILROAD COMPANY, John A. Hurlburt, and Thomas L. Evans, respondents,	} Assignment of errors.
<i>vs.</i>	
THE UNITED STATES OF AMERICA, APPELLANT.	

Afterwards, to wit, on the day of in the year of our Lord one thousand eight hundred and ninety-six, at the October term for the year 1896 of the Supreme Court of the United States, at the Capitol in the city of Washington and District of Columbia, comes the said The

United States of America, appellant, by Judson Harmon, its Attorney-General, and Daniel R. Murphy, United States attorney for the district of Oregon, and says that in the record and proceedings in the above-entitled matter there is manifest error in this, to wit:

The United States circuit court of appeals for the ninth circuit, in deciding the above-entitled case, on the 19th day of October, 1896, in and by its decision held, among other things, as follows: "The joint resolution of May 31, 1870, and the proceedings taken thereunder by the Northern Pacific Railroad Company have, therefore, no bearing what-
 386 ever on the question in this case, and the effect given by the court below to the maps filed by the Northern Pacific Railroad Company under and pursuant to the provisions of that resolution constitutes one of the errors into which the court below fell in its consideration and decision of this case." And in so holding and deciding the said the United States circuit court of appeals for the ninth circuit committed error.

II.

That the said the United States circuit court of appeals for the ninth circuit, in deciding said case, on the 19th day of October, 1896, held: "The only thing remaining in the case that could take the lands in controversy out of the mass of public lands to which the grant of 1866 to the Oregon & California Railroad Company applied is the preceding grant to the Northern Pacific Railroad Company of July 2, 1864, and the Perham map or diagram filed thereunder." And in so holding and deciding the said the United States circuit court of appeals for the ninth circuit committed error.

III.

That in deciding said above-entitled suit on the 19th day of October, 1896, the said the United States circuit court of appeals for the ninth circuit held and decided: "It is not pretended that any order of withdrawal was made by any officer of the Land Department based on that map. Was it sufficient, taken in connection with the act of July 2, 1864, to constitute a statutory withdrawal of the lands in question for the benefit of the Northern Pacific Railroad Company? It was not,
 387 for at least two very substantial and obvious reasons." And in so holding and deciding the said the United States circuit court of appeals for the ninth circuit committed error.

IV.

That the said the United States circuit court of appeals for the ninth circuit, in deciding said above-entitled case on the 19th day of October, 1896, decided and held: "They (the lands in dispute) therefore remained public lands to which the subsequent grant to the Oregon & California Railroad Company might apply, unless it be that the grant contained in the act of July 2, 1864, in and of itself, without any designation of the route of its road by the grantee, Northern Pacific Railroad Company, operated to withdraw the lands in controversy from the mass of public lands." And in so deciding and holding the said the United States circuit court of appeals for the ninth circuit committed error.

V.

That the said the United States circuit court of appeals for the ninth circuit, in deciding said above-entitled case on the 19th day of October, 1896, decided and held: "The court below in its opinion held that 'It might definitely locate its line in good faith in compliance with the requirements of the act, and by such location select and acquire the lands within the place limits upon both sides of its line. It is unimportant that the company never exercised this power.' In holding that it is unimportant that the Northern Pacific Railroad Company never exercised its right to locate and build its road along and opposite to the 388 lands in controversy, the court below committed its second error."

And in so holding and deciding the said the United States circuit court of appeals for the ninth circuit committed error.

VI.

That the said the United States circuit court of appeals for the ninth circuit, in deciding said case on the 19th day of October, 1896, decided and held: "The grant of July 2, 1864, to the Northern Pacific Railroad Company never having taken effect so far as concerns the land in controversy in this suit, they were public lands at the time of the grant to the Oregon & California Railroad Company, and at the time of the definite location by that company of the road it was authorized to build along and opposite to them, and falling as they do within the terms of that grant, and having been earned by and patented to that company, the judgment is reversed and the cause remanded, with directions to the court below to dismiss the bill." And in so deciding and holding the said the United States circuit court of appeals for the ninth circuit committed error.

VII.

That the said the United States circuit court of appeals for the ninth circuit, in deciding said case on the 19th day of October, 1896, decided the same in favor of the Oregon & California Railroad Company, John A. Hurlburt and Thomas L. Evans, appellants in that court, and against the United States of America, appellee in that court, and in so deciding the said the United States circuit court of appeals for the ninth circuit committed error.

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VIII.

That the said the United States circuit court of appeals for the ninth circuit, in deciding said case on the 19th day of October, 1896, reversed the judgment of the circuit court of the United States for the district of Oregon and remanded said cause to said United States circuit court for the district of Oregon, with directions to said court to dismiss the bill filed by the United States of America in said cause, and in so deciding and holding the said the United States circuit court of appeals for the ninth circuit committed error.

Wherefore, the said the United States of America prays that the order of the said the United States circuit court of appeals for the ninth cir-

cuit be reversed, and that the said the United States circuit court of appeals for the ninth circuit be ordered to enter an order affirming the decision of the United States circuit court for the district of Oregon in the above-entitled case.

JUDSON HARMON,
Attorney-General for the United States.

DANIEL R. MURPHY,
U. S. District Attorney for the District of Oregon.

(Endorsed:) Assignment of errors. Filed December 21, 1896. F. D. Monckton, clerk.

390 UNITED STATES OF AMERICA, ss:

The President of the United States to the Oregon & California Railroad Company, John A. Hurlburt, and Thomas L. Evans, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at the city of Washington, in the District of Columbia, within sixty days from the date hereof, pursuant to an order allowing an appeal duly filed and of record in the clerk's office of the United States circuit court of appeals for the ninth circuit, wherein the United States of America are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants as in the said order allowing appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Joseph McKenna, judge of the United States circuit court for the ninth judicial circuit, this 22d day of December, A. D. 1896.

JOSEPH MCKENNA,
United States Circuit Judge for the Ninth Judicial Circuit.

391 UNITED STATES OF AMERICA, ss:

On this day of , in the year of our Lord one thousand eight hundred and ninety- , personally appeared before me, F. D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, the subscriber, and makes oath that he delivered a true copy of the within citation to .

Subscribed and sworn to before me at San Francisco, California, this day of , A. D. 189 .

Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

Service of within citation by copy served admitted at San Francisco, California, this 23rd day of December, 1896.

WM. SINGER, JR.,
Attorney for Appellees.

WM. F. HERRIN,
Counsel for Appellees.

(Indorsed:) No. 275. Supreme Court of the United States. The United States of America, appellants, vs. The Oregon and California R. R.

Co. et al. Citation. Filed December 23, 1896. F. D. Monckton, clerk
U. S. circuit court of appeals, 9th circuit.

392 United States circuit court of appeals for the ninth circuit.

UNITED STATES OF AMERICA, APPELLANTS,

vs.

THE OREGON & CALIFORNIA RAILROAD COMPANY,
John A. Hurlburt, and Thomas L. Evans, appellees. } No. 275.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing record, being volume 2, consisting of 173 pages, including appendix thereto consisting of 68 pages, together with volume 1 in said cause, containing 158 pages, to be a full, true, and correct copy of the printed transcript of record and of all proceedings in our said circuit court of appeals, and that the same together constitute the transcript on appeal to the Supreme Court of the United States in said cause.

Attest my hand and the seal of said United States circuit court of appeals at San Francisco this 26th day of December, 1896.

[SEAL.]

F. D. MONCKTON, *Clerk.*

(Indorsed on cover :) Case No. 16478. Term No., 295. The United States, appellant, vs. The Oregon & California Railroad Company, John A. Hurlburt, & Thomas L. Evans. U. S. circuit court of appeals, 9th circuit. Filed January 28, 1897.

